

THE STATE OF SOUTH CAROLINA  
IN THE COUR OF APPEALS

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SEP 20 2019  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
COURT OF GENERAL SESSION  
CASEY MANNING, CIRCUIT COURT JUDGE

CASE NO. 2018-002034

Matthew Jamison

Appellant

v.

The State

Respondent

PROOF OF SERVICE

I certify I have served the Appellant Brief on Stephanie Taylor, and Alan Wilson Esq by depositing a copy of it in The United States Mail on \_\_\_\_\_ addressed to:

Stephanie Taylor, Esq  
Richland County Solicitor Office  
1701 Main Street  
Columbia, SC 29201

Alan Wilson  
Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Matthew Jamison  
Public Safety Building  
404 N. Broad Street  
Clinton, SC 29325

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## STATEMENT OF ISSUES ON APPEAL

1. Should petitioner get credit for time out on appeal bond when it was controlled by many rules and restriction. An appeal bond is rare and nonexistent for a murder charge.
2. Should petitioner get credit for time done on curfew while being monitored by The Department of Probation, Attorney General Office, City of Columbia Police Department, and Richland County Sheriff's Department satisfying section 24-13-40 of South Carolina Code, and Article XII 9. Control of Convicts.
3. Under all the circumstances of this case, would it be fundamental fair for this court to use the discretion give to the court under section 24-13-40 to fix this miscarriage of justice brought on by South Carolina judicial than can only be fixed by South Carolina Courts.
4. Did Judge Manning make his decision base on the old 24-13-40 which is an error because it was an amendment.
5. Since S.C. is the original jurisdiction, can this court fix the present legal consequences upon past event that's making petitioner punishment greater, cruel and unusual
6. Do South Carolina Constitutional violation done to petitioner in the courts of S.C. [The original jurisdiction] set the course in support of why Judge Manning should have rule in petitioner favor, and why this court should hear it.

## STATEMENT OF CASE

In 2009, petitioner was granted appeal bond on his 2000 conviction from S.C. Supreme Court, which is rare on a murder. Petitioner began serving and ultimately completed a 5 year probation from a concurrent suspended sentence. The 2000 case was transferred to S.C. Court of Appeals. In 2012, Columbia Police arrested the petitioner for obstruction of justice and gave him a 200,000 bond, and the charge was dismissed. The state filed a motion to revoke the appeal bond, after careful consideration. The S.C. Court denied state motion, but added more conditions to the bond filed on March 30, 2012. On July 18, 2012, The S.C. Court of Appeal affirmed the decision of The PCR Court opinion NO: 2012-6P-437 rehearing denied on August 22, 2012. Writ of Certiorari was filed. On October 22, 2014, unaimously denied state on the two issues raised, nonetheless, proceeded to address issues which were not argued by either party. Justice Beatty dissented on both holdings. On December 4, 2014, rehearing denied petitioner sent back to SCDC. Attorney Tommy Thomas was hired July 2016 for motion requested credit. The hearing was on September 4, 2018 before Judge Casey Manning. The State opposed citing old cases stating time served credit only applies to pretrial in actual physical confinement.

# Standard of Review

This case is a issue of fundamental fairness. The South Carolina Supreme Court granted petitioner an appeal bond under the traditionally 5 prong rule under State v. Spann into they hear the issue on appeal which are unusual and more shocking on murder but they knew he would prevail under the 5 prong. Then come 5 years 10 months later, The Supreme Court adopt a new law reversing two lower court. Announcing new standard which no one could reasonably have been aware not even them at the time they granted bond construction utterly subversive of all the object of the provision the bond was set off. Adhere to the new rule eliminating a right to a cause of action after it has accrued existing causes shall be settled upon existing facts any subsequent change to reduce recovery violate constitutional safeguard. It is well settled that a state has no obligation to provide post-conviction procedures or grant bond they usually don't but when it does it must apply them in consistent and fair manner that was not done here. The Supreme Court changed in this very case the standard governing such claims following a guilty plea, but failed to afford opportunity to present argument addressing new rule and disregard both lower court ruling satisfying the new rule. Denied petitioner a full and fair fact hearing. When a state court enter it's judgement without petitioner knowledge and opportunity to present an argument such a judgment need not be deferred everything that went into consideration when granting bond is all that should have been considered.

## ARGUMENT

The legislature has amended the statute to allow credit for home detention time. Section 24-13-40 of South Carolina codes of law (Supp. 2014). The language states an individual may be given any time spent under monitored house arrest taking consideration outside of a pure detention setting allowing for the granting of time where an individual is supervised outside of a detention facility. Petitioner was released on an appeal bond and began serving probation in February 2009. On March 30, 2012, more conditions were added to his bond by South Carolina Court of Appeals. The petitioner was on curfew from 10:00 p.m. to 6:00 a.m. daily. The petitioner suggested this period of supervision would amount to restriction upon his liberty and as such considered for credit under 24-13-40. Due to being monitored during this period of time by The Department of Probation and Parole, any conditions impacting his freedom by an appeal bond. The Attorney General had him walk a narrow path, they also had Richland County following him and the people leaving his shop. At one point, they even followed his Attorney Tricia Blanchette, which made living life in servitude. The services of probation from the concurrent sentences should void under 24-13-40 Hayes v. State for split sentences the time was max out in 2004. The petitioner did not get out until 2009, that detention should apply against probation beside that with the probation and the condition of the bond the curfew were like being confined like an act of imprisonment restrained a regulation with a lot of

restriction limitation it all punishment a form of house arrest I was only permitted to leave for work. This petition should be entertained and granted in order that wrongs done may be remedied. He's asking this court to fix this unjust. As noted South Carolina Supreme Court granted bond after notice of appeal by The State from The Circuit Court granting application for post- convictions, which are unusual and more shocking on murder but everything The State argued the courts disagreed with putting an end to the matter bonds was granted under. Petitioner could understand if another court had granted bond or the issue that was before them when bond was set would have prevailed are the reason he has to return to prison leaving behind the life he built the 5 years 10 months he was out. He had custody of his oldest son, he had 2 more children while out 5 children in all, he owned his own business, got married, and just put the own payment on his family home. What's even more unfair is before he was given bond, his max out date was 2017 because of 85% he would have to do 2 years probation done by 2019, now his max out date is 2023 done with sentence 2025 making the whole granting and new rule unusual. To make matters worse, petitioner was on probation for 5 years for a concurrent sentence, and was on a curfew from 10:00 p.m. to 6:00 a.m. condition added to his bond. Under 24-13-40 Hayes v. State probation time was void because that sentence was max out 2004 he did not get out until 2009. Petitioner has tried to resolve all this by writing Attorney General to be told there was nothing they can do and good luck! Petitioner feels he never was free because anything that happens around him was guilty until proven innocent is what he had to do in every

situation he was in while he was out on bond that happened while he was at work every time. The fact be there but because of this case I had to prove in court what is already known b the facts I have nothing to do with it. Judge Manning held what was cited by the state defining time served as is used in 24-13-40 as the time during which a defendant is in pre-trial detention in actual physical confinement. The petitioner offers the following as to why the court should grant the Appeal Bond time in this case. The petitioner argues that Section 24-13-40 of the South Carolina Code has in the past specifically provided for when a Defendant is entitled to credit for time served rior to trial and sentencing. The basis and rational of the statute is that an inmate should be given credit for detention time prior to being sentence. The petitorner argues that this has been expanded by the addition and amendment of the statue. The language now states that an individual may be given any time spent under monitored house arrest. Petitioner's argument is that this amendment takes this consideration outside of a pure dentention setting. It allows for the granting of time where an individual is supervised outside of a detention facility. The petitioner argues that it was the legislative intent to include the possibility of credit for time outside of pure detention time. Based upon this amendment, it would not beyond the legislative intent that credit be given for time spent on an Appeal Bond, especiall while that time was under supervision by the South Carolina Department of Probation and Parole and Pardon Services. The petitioner was released, and began serving his probration of February 20, 2009. That as part of his standard conditions of probation, he was required to have

an appropriate residence and keep Probation and Parole advised of his current residence. He was restricted from the use of any controlled substances, could not consume alcoholic beverages to excess, nor enter establishments where the primary business was the sale and drinking of alcohol. He was required to submit to urinalysis or blood test as required by Probation and Parole instructed him to avoid. He was required to work in a lawful occupation, pay a supervision fee and could not leave the state without permission from his probation agent. The petitioner argues that his period of supervision would amount to restrictions upon his liberty and as such considered for credit under section 24-13-40. It further appears that Mr. Jamison's Appellate Bond was reconsidered on March 30, 2012 and the following conditions were added to his bond:

1. Matthew Jamison's must be in his residence by 10:00 p.m. every night and remain there until 6:00 a.m. each morning:
  1. Matthew Jamison may not associate with or be in contact with any known felons; and
  2. Matthew Jamison's bond shall be increased to \$75,000 (an additional \$45,000)

While there is no case law that directly supports the petitioner's position, there is also no case law that supports the proposition that time cannot be given for time while out on appeal bond. Petitioner argued that it could be considered that legislative intent in allowing the courts discretionary granting of home detention time could envision this situation. Due to the fact that petitioner was monitored during this period of time constitute official detention

because it was so restrictive 24-13-40 grant tiem served out of jail,  
and the conditions impacting his freedim by appeal bond curfew.

# Article I

(Section 3) Due process: equal protection of law under this constitution shall not be abridged nor deprived of liberty without due process of law nor denied equal protection

(Section 14) Witness = to have compulsory process for obtaining witnesses in his favor

Established rule is the law of the land which over time became synonymous with due process of law given the fundamental unfairness which the new retroactive rule is perceived the conduct of legal proceeding according to established rule and principle for the protection and enforcement of private right including notice and the right to fair hearing. Due process clause and equal protection do not permit the state to both deny a proper opportunity to be heard and then use that very denial to preclude from vindicating right. Like case must be treated a like the most fundamental of our legal principles equal justice under law demands that this be so. Discretion is not whim, and limiting discretion according to legal standards help promote the basic of justice that like case should be decided a like. The Supreme Court has held there will p hold the PCR judge's finding if there is any evidence of probative value in the record to support them Rule 220 © SCACR stating this court may affirm any ruling order decision or judgment upon any ground appearing in the record is what the courts went by until my case. This fundamental principle was violated then on top of that SC Supreme Court denied petitioner an opportunity to argue that his plea should be set aside under the newly announced standard like everyone after him gets to it's not only the failure of the PCR process but the detention is unlawful because of the witness the fact recited by the State about petitioner been beat up, pistol whipped, and shot toward him sister and petitioner baby assault and sled report his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond reasonable doubt failure in the PCR process indicate that circumstances exist that render such process ineffective to protect the right of petitioner his entitled to what the constitution and laws of South Carolina promise him. This Court affirmed PCR Judge Relief on when the transcript of guilty plea contains more bad information about the person known as "Jig" than it does about person

who is pleading guilty that's strongly indication that self-defense then corroborating witness come forward when the state say hundred or more witnesses a family member were not cooperative but witness support the petitioner position of self-defense it fundamentally unfair not to allow that information to be presented to a jury. In plea counsel told court undoubtedly advised the petitioner that claim of self-defense could not be established. It was too risky to attempt in opinion of plea counsel. This Court 9SC Court of Appeals) quote disposition on the pleadings and record is not proper if there exist a material issue of fact. All applicant are entitled to a full and fair opportunity to present claims in PCR. Considering whether the defendant could withdraw his guilty plea based on after discovered evidence and stating there are case that motions of this character should be entertained and granted in order that wrongs done may be remedied answers the new rule of interest of justice.

# Article I

(Section 4) Expost Faeto Laws: impairment of contracts and obligation

(Section 15) Unusual Punishment

Article III

Once a cause of action under a particular rule of law accrues to a person by virtue of an injury to his right, that person's interest in the cause of action and the law which is the basis for a legal action becomes vested. Upon principle every statute, or application of new rules, which take away or impair vested right acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability in respect to transition or consideration already past must be deemed retrospective. The legal relation resulting from the operative act consisting of rights and their corresponding duties accompanies by certain power, privileges the sum of these legal relations is call obligation. Because of the disjunctive or the constitutional principle does not require a showing of a vested right. Because the phrase is disjunctive a new obligation a new duty or a new disability an analysis need go no further then one of there. The Higher Court purpose is to prevent injustice, here the court is the cause of it. The same court that granted the bond is the cause of why bond should have not been granted attach new legal consequences to prior events. Petitioner would have max sentence out 2017 off paper work by 2019 now he don't max out until 2023 and won't be off paper work until 2025. Petitioner had started his own towing and carrier business, had two more children, and got married to have to come back because of a new rule by the same court that set him free is cruel making his punishment unusual because he is doing more time under 24-13-40 his concurrent sentences probation were void and should be given time for that complete probation when he was under strict supervision and control by officer employed by the state the new rule which are inconsistent with constitution shall cease upon its adoption. Petitioner have a right to judicial review Article I Section 2 right of petition for a redress of grievances. This court has the power to adjudicate petitioner claims when the new rule are applied retroactively abandon the standard of review in recent case, the majority

errantly under took a de novo review as if the lower court committed an error of law by not applying a rule that did not exist.

## CONCLUSION

This court in analysis the fact and circumstances should entitle petitioner time on appeal bond or at the very last time from start of curfew.

PROOF OF SERVICE

I certify I have served the Appellant Brief on Stephanie Taylor, and Alan Wilson Esq by depositing a copy of it in The United States Mail on \_\_\_\_\_ addressed to:

Stephanie Taylor, Esq  
Richland County Solicitor Office  
1701 Main Street  
Columbia, SC 29201

Alan Wilson  
Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Matthew Jamison  
Public Safety Building  
404 N. Broad Street  
Clinton, SC 29325

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11/11/11

Exhibits

A

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11/6/18

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
State of South Carolina )  
-v- )  
Matthew Jamison, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS

**ORDER**

INDICTMENT NO(s): 1998GS4025409,  
1998GS4025411, 2000GS4053234,  
2000GS4040697

2018 SEP 17 AM 10:43  
CHRISTIE W. MURKIN  
C.C.P. & G.S.

FILED

This matter came before Judge Casey Manning on September 4, 2018. Present at the hearing were Stephanie Taylor, representing the State; and Tommy Thomas representing the Defendant. The Defendant presented a motion for credit towards sentence.

In 2009, Defendant was granted a PCR and his 2001 conviction for Voluntary Manslaughter, which he was sentenced to 20 years, was vacated. When he was released from SCDC on an appeal bond, Defendant began serving and ultimately completed a 5 year probation term that was part of his sentence for an unrelated 2000 PWID Cocaine conviction. In 2014, Defendant's Voluntary Manslaughter conviction was reinstated and he was sent back to SCDC to serve the remainder of his sentence.

In his motion, Defendant requested that the Court credit the 5 years he spent on probation as part of his PWID Cocaine sentence to the 20 year sentence for the Voluntary Manslaughter conviction. The State opposed Defendant's motion citing case law that states time served credit only applies to pre-trial detention in actual physical confinement and other limited circumstances; not time a defendant is out in the community on probation.

The Court determined Defendant is not entitled to any time served credit for the 5 years he spent on probation and Defendant's motion is denied.

**IT IS SO ORDERED.**

Sept 17, 2018

Date

Casey Manning

Judge Casey Manning

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS  
FIFTH JUDICIAL CIRCUIT

DOCKET NO.: 98-GS-40-25409; 98-GS-40-25411  
00-GS-40-40697; 00-GS-40-53234

STATE OF SOUTH CAROLINA, )  
 )  
Respondent, )  
v. )  
 )  
MATTHEW JAMISON, )  
 )  
Petitioner. )  
\_\_\_\_\_ )

ORDER GRANTING  
MOTION FOR CREDIT  
TOWARD SENTENCE

**STATEMENT OF THE CASE**

The Petitioner was indicted by the October 2000 term of the Richland County Grand Jury for murder (2000-GS-40-53234). He was represented by John Delgado, Esq. On August 28, 2001, Petitioner pled to the lesser-included offense of voluntary manslaughter before the Honorable L. Casey Manning and was sentenced to a term of twenty (20) years. He also pled to and was sentenced as follows: PWID Cocaine – fifteen (15) years suspended to eight (8) years with five (5) years' Probation. Resisting Arrest - one (1) year. All sentences running concurrently. There was no direct appeal.

On January 24, 2002, the Petitioner filed an Application for Post-Conviction Relief, Docket No.: 2002-CP-40-3078. The State made its Return on April 3, 2001. An evidentiary hearing was held in front of the Honorable G. Thomas Cooper, Jr., on April 27, 2005 at the Richland County Courthouse.

On July 7, 2005, the Honorable G. Thomas Cooper, Jr. issued an Order of Dismissal. The Petitioner filed a timely Notice of Intent to Appeal. On behalf of the Petitioner, Robert M. Pachak, South Carolina Office of Appellate Defense submitted a Johnson Petition. On March 6,

2007, the South Carolina Court of Appeals issued an Order denying the Petition for Writ of Certiorari and granting counsel's request to withdraw.

The Petitioner then filed a successive Application for Post-Conviction Relief on November 28, 2006. The State made its Return on March 26, 2007. An evidentiary hearing was held in front of the Honorable William P. Keesley on June 27, 2008 at the Richland County Courthouse. On June 30, 2008, the PCR Court issued a memorandum opinion granting Post-Conviction Relief. The Final Order Granting Post-conviction Relief was filed on October 14, 2008. The PCR court's order granting relief was based on the five (5) part newly discovered evidence test from Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

On October 21, 2008, the State filed a timely Notice of Appeal and then a Petition for Writ of Certiorari on April 23, 2009. Petitioner filed a Return to Petition for Writ of Certiorari on August 21, 2009. By way of a Rule 243 (1), SCACR Order dated March 10, 2010, the case was transferred to the South Carolina Court of Appeals.

The Court of Appeals granted the Petition by Order dated February 10, 2011.

On July 18, 2012, the South Carolina Court of Appeals issued an opinion in which it affirmed the decision of the PCR court vacating Petitioner's August 27, 2001 guilty plea. Jamison v. State, Unpublished Opinion No.: 2012-UP-437 (S.C.Ct. App. filed July 18, 2012). A Petition for Rehearing was filed on July 27, 2012, it was denied on August 22, 2012. A Petition for Writ of Certiorari was filed with this Court pursuant to Rule 243 (1), SCACR. On March 20, 2013, Certiorari was granted.

On February 25, 2009, an Appeal Bond was granted and the Petitioner was released on Bond on February 28, 2009.

In addition, the Petitioner began serving his Probationary portion of his sentence and was assigned a Probation Agent. All probationary sentences were completed in February, 2014.

The decision of the Lower Court granting his PCR was reversed by the South Carolina Supreme Court on December 8, 2014. The Petitioner turned himself into the South Carolina Department of Corrections. Petitioner's current max out date is March of 2023. The Petitioner was out for a period of Two Thousand one hundred and nine (2,109) days on his Appeal Bond.

### ARGUMENT

During the period of release on Appeal Bond, the Petitioner was gainfully employed with Cayce Concrete. He attended school and was able to obtain his CDL. He started a towing Company in 2010. He towed vehicles for the South Carolina Highway Patrol. He also had a contract to deliver medications from 2013 through June of 2014.

He was married in July, 2014. He has five (5) children that he is raising and financially responsible for. The Petitioner is requesting credit against his sentence for the time served on the Probationary sentence.

The Court has generally held that as defined "time served" as it is used in §24-13-40 as the time during which a Defendant is in pre-trial confinement and charged for the offense for which he is sentenced, so long as he is not serving time for a prior conviction. Blakeney v. State 339 S.C. 86, 529 SE 2d 9 (2000) and State v. Higgins 357 S.C. 382, 593 SE 2d 180 (2004)

Since these cases, the legislature has amended the statute to allow credit for Home Detention time. Section 24-13-40 of the South Carolina Codes of Laws (Supp. 2014) now provides the following:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall

have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

In the case of Hayes v. State 413 S.C. 553, 777 S.E. 2d 6 (2015), the Court found that §24-13-40 does not make a distinction for split sentences. Under the plain language of the statute, the Court found that pre-trial detention time should apply against a Probation Revocation whenever a Probationer receives a split sentence.

ADD ON  
2

The Petitioner offers the following as to why the Court should grant the Appeal Bond time in this case. The Petitioner argues that Section 24-13-40 of the South Carolina Code has in the past specifically provided for when a Defendant is entitled to credit for time served prior to trial and sentencing. The basis and rationale of this Statute is that an inmate should be given credit for detention time prior to being sentenced. The Petitioner argues that this has been expanded by the addition and amendment of the Statute. The language now states that an individual may be given any time spent under monitored house arrest. Petitioner's argument is that this amendment takes this consideration outside of a pure detention setting. It allows for the granting of time where an individual is supervised outside of a detention facility.

The Petitioner argues that it was the legislative intent to include the possibility of credit for time outside of pure detention time. Based upon this amendment, it would not be beyond the legislative intent that credit could be given for time spent on an Appeal Bond, especially while that time was under supervision by the South Carolina Department of Probation, Parole and

Pardon Services. The Petitioner was released, and began serving his Probation on February 20, 2009.

That as part of his standard conditions of Probation, he was required to have an appropriate residence and keep Probation and Parole advised of his current residence. He was restricted from the use of any controlled substances, could not consume alcoholic beverages to excess, nor enter establishments where the primary business was the sale and drinking of alcohol. He was required to submit to urinalysis or blood test as required by Probation and Parole. He could not purchase or possess any firearms or other dangerous weapons. Nor could he associate with any person who had a criminal record or any other person that Probation and Parole instructed him to avoid. He was required to work in a lawful occupation, pay a supervision fee and could not leave the state without permission from his Probation Agent. (Attachment A) The Petitioner argues that this period of supervision would amount to restrictions upon his liberty and as such considered for credit under Section 24-13-40.

It further appears that Mr. Jamison's Appellate Bond was reconsidered on March 30, 2012 and the following conditions were added to his Bond:

1. Matthew Jamison must be in his residence by 10:00 p.m. every night and remain there until 6:00 a.m. each morning;
2. Matthew Jamison may not associate with or be in contact with any known felons; and
3. Mathew Jamison's bond shall be increased to \$75,000.00 (an additional \$45,000.00).

(Attachment B)

While there is no case law that directly supports the Petitioner's position, there is also no case law that supports the proposition that time cannot be given for time while out on Appeal Bond.

The State submits the case of Nora Robinson v. State of South Carolina, 292 SC 65, 49 SE 2d 433 (1998) and in Hayes v. State, 14 SC 553, 777 SE 2d 6 (2015). The Court finds that both of these cases are distinguishable from the issue at hand. The Robinson decision is concerning credit for time spent in Federal Incarceration. The case of Hayes deals with a split sentence. The State then argued a U.S. 4<sup>th</sup> Circuit Appeals decision as controlling on the issue of Appellate Bond time credit. Counsel for Petitioner asserted that this case is a 1991 decision and that it does not apply to the issue at hand because this case is based upon the concept of institutional detention. This definition of detention would not encompass the legislative amendment to provide for home detention time and therefore would only be applicable to the pre-amended statute and is inconsistent with the idea of home detention time.

Counsel argued that it could be considered that the legislative intent in allowing the Court's discretionary granting of home detention time could envision this situation. That due to the fact that the Petitioner was monitored during this period of time, and has conditions impacting his freedom by the Appeal Bond, that the Court could in fact, should it choose, to award credit for this time. The Court notes that the granting of an Appeal Bond by the Supreme Court is rare.

The Petitioner in this case argues that he would be entitled to credit for time while under supervision for the Probationary portion of his concurrent sentences. That he was under supervision from February 28, 2009 until December 8, 2014 and would be entitled to this time upon his return to incarceration.

#### CONCLUSIONS OF LAW

This Court, in analysis of the facts and circumstances as well as applicable Law, finds and concludes that the Applicant should be granted the additional credit for the time that he was

on Appellate Bond. Pursuant to §24-13-40, S.C. Code of Laws (1976 as amended), this court has the discretion to grant credit for time spend on the Appeal Bond. The Petitioner was supervised on Probation and had liberty interest restrictions as a condition of the Bond.

Therefore, based upon the foregoing, the Court finds and concludes:

That Mr. Jamsion is entitled to additional time while he was on Appellate Bond and Probation Supervision from February 28, 2009 through December 8, 2014 in the amount of 2109 days.

AND IT IS SO ORDERED.

---

The Honorable Casey Manning  
Judge of the Fifth Judicial Circuit

September 12, 2018  
Richland County

Exhibit

B

# The South Carolina Court of Appeals

Matthew Jamison,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable William P. Keesley  
Richland County  
Trial Court Case No. 2006-CP-40-07054

RICHLAND COUNTY  
FILED  
2012 APR -2 AM 10:42  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

---

## ORDER

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The State has appealed an order of the circuit court granting Matthew Jamison's application for post-conviction relief. On February 20, 2009, our Supreme Court granted Jamison's motion for an appeal bond, releasing Jamison on bond pending a final decision in this matter.

The State has now filed a motion to revoke and vacate the appeal bond, arguing Jamison has failed to be of good behavior since his release on bond. After careful consideration of the motion, Jamison's return, and other filings, we deny the State's motion, but we add the following conditions to Jamison's bond: (1) Jamison must be in his residence by 10:00 p.m. every night and remain there until 6:00 a.m. each morning; (2) Jamison may not associate with or be in contact with any known felons; and (3) Jamison's bond shall be increased to \$75,000 (an additional \$45,000).

Any request to be heard regarding the additional terms of the bond shall be made to this Court within ten days. Unless such a request is made, Jamison shall appear before a circuit court judge in Richland County within fifteen days to acknowledge the additional conditions,

RICHLAND COUNTY  
FILED  
2019 FEB 25 AM 11:48  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

determine Jamison's residence, and post bond. The Attorney General's Office shall arrange for and facilitate the hearing. The form of the bond and the surety thereon shall be approved by the circuit court judge. The recognizance shall be filed with the Richland County Clerk of Court. Jamison's failure to appear for the hearing as scheduled by the Attorney General's Office or post bond will result in the revocation of the bond.

IT IS SO ORDERED.

*H. Bruce Williams*

*Paul W. Thomas*

*James E. ...*

Columbia, South Carolina

cc: Assistant Attorney General Brian T. Petrano  
Tricia A. Blanchette, Esquire

**FILED**

March 30, 2012

2019 FEB 25 AM 11:48  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

RICHLAND COUNTY  
FILED

Exhibit

C

State of South Carolina  
Department of Probation, Parole and Pardon Services

Nikki R. Haley  
Governor



Jerry B. Adger  
Director

2221 DEVINE STREET, SUITE 600  
POST OFFICE BOX 50666  
COLUMBIA, SOUTH CAROLINA 29250  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9440  
<http://www.dppps.sc.gov/>

May 9, 2016

RE: Matthew Jamison  
DOB: 04/14/XXXX  
SSN: XXX-XX-7347

2019 FEB 25 AM 11:48  
JEANETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

To Whom It May Concern:

According to the Department's records, the above individual completed the required period of supervision on 02/26/2014. This Department does not confirm or guarantee that pending or future criminal sanctions may not occur subsequent to the date of this letter.

If you need further assistance, you may contact this office at 803-734-9195.

Sincerely,

A handwritten signature in cursive script that reads "Julie Dunn".

Julie Dunn  
Records Administrator

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

STATE

-vs-

IN THE COURT OF GENERAL SESSIONS

2000 -GS- 40 - 40697

Count

Matthew Jamison

STANDARD CONDITIONS OF PROBATION

- ① I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my sentencing or release, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
- ② I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere, at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess, nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis or blood test when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
4. I shall not possess or purchase any firearms or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or Local Law, and I shall immediately contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution or other payments, and the service of any period of incarceration.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
11. I agree to pay restitution and a statutory collection fee payable to the Department of Probation, Parole, and Pardon Services as directed by Agents of the Department. (20% collection fee charged)

I hereby certify that this statement of Conditions has been read and explained to the Probationer listed above and he/she has agreed to them.

I hereby certify that the Conditions above have been explained fully to me and in agreement thereto, I attach my signature:

This 11 day of July, 2000

x MATTHEW JAMISON  
Offender

JB Malone  
Agent

Offender's Address

1221 GREGG STREET, COLUMBIA, S.C. 29201

Agent's Address

2200 Corning St, Col. SC

Offender's Address

(803) 734-6320

Agent's Phone Number

779-0488

Offender's Phone Number

Exhibit

D

SHP

*[Handwritten initials]*

# The Supreme Court of South Carolina

Matthew Jamison, Respondent,  
v.  
State of South Carolina, Petitioner.

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ORDER

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This matter is before the Court pursuant to a notice of appeal filed by the State from an order of the circuit court granting respondent's application for post-conviction relief. Respondent now asks this Court to allow him to be released on bond pending a final decision by the Court in this matter. The State opposes the motion.

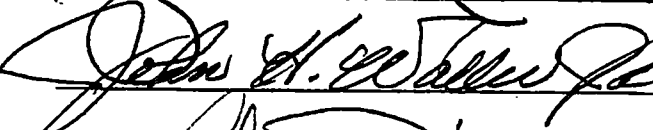
IT IS ORDERED that respondent shall be released from custody upon the following conditions: (1) he will surrender himself to the Sheriff of Richland County immediately upon the filing of an order or opinion of this Court finally deciding the matter adversely to him; (2) he will comply with all orders issued by this Court; (3) he will not depart the State of South Carolina without the permission of this Court; and (4) he will be of good behavior.


IT IS FURTHER ORDERED that respondent shall not be

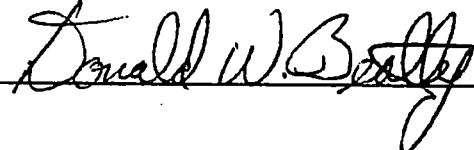
released until he and a good and sufficient surety have signed a recognizance in the amount of \$30,000, witnessed by a judge of the circuit court, which shall be forfeited to the State upon the failure of respondent to comply with the terms of this order. The form of the bond and the surety thereon shall be approved by the circuit court judge. The recognizance shall be filed with the Clerk of Court of Richland County. Deposit of a cash percentage in lieu of bond pursuant to S.C. Code Ann. § 17-15-15 (2003) shall not be permitted.

IT IS SO ORDERED.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

I would deny the petition for appeal bond.

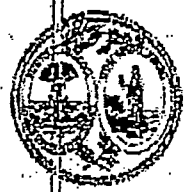
  
\_\_\_\_\_  
J.

Columbia, South Carolina

February 20, 2009

cc: Assistant Attorney General Brian T. Petrano  
Tricia A. Blanchette, Esquire  
The Honorable Jeanette McBride

Exhibit  
E



State of South Carolina  
The Circuit Court of the Eleventh Judicial Circuit

WILLIAM P. KEESLEY  
JUDGE

127 COURTHOUSE SQUARE  
POST OFFICE BOX 19  
EDGEFIELD, SOUTH CAROLINA 29824-0019  
TELEPHONE (803) 637-4095  
FAX (803) 637-2035  
E-MAIL: wkeesley@sccourts.org

FAX MEMORANDUM/COVER SHEET

TO: Tommy A. Thomas, Esquire  
Tricia A. Blanchette, Esquire  
Brian Petrano, Assistant Attorney General

FAX NO.: 803-781-4226  
803-253-6283

FROM: Jennifer P. Sumner  
Law Clerk

RE: Matthew Jamison v. State of South Carolina  
2006-CP-40-7054

DATE: June 30, 2008

TOTAL NUMBER OF PAGES BEING FAXED INCLUDING MEMO: 15

MESSAGE:

Please find attached a copy of an Order related to the above referenced case which we are forwarding to the Clerk of Court for filing.

Thank You.

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Matthew Jamison, #267844, )

Applicant / Petitioner )

vs. )

State of South Carolina, )

Respondent. )

COURT OF COMMON PLEAS **198**

Case No. 06-CP-40-7054

**MEMORANDUM ORDER**

Following a hearing, the court makes the following ruling(s) as indicated below.

- (x) 1. The application for post-conviction relief is granted in part and denied in part. A more detailed order is to follow as directed in No.4 below.
- (x) 2. The State's motion to dismiss is denied as to the claim based on after-discovered evidence in the form of testimony of a corroborating witness.
- (x) 3. Other: The proposed order should include findings of fact and conclusions of law as to each issue raised. It should specifically include these findings:
  - a) That the information contained in the SLED report as to gunpowder residue does not constitute after-discovered evidence sufficient to warrant a new trial.
  - b) That the information contained in the SLED report regarding gunpowder residue was known to the applicant or through the exercise of reasonable diligence should have been known to the applicant for more than one year, and it is therefore not a basis for PCR under §17-27-45(c).
  - c) That the eyewitness testimony of Theotis Bellamy constitutes newly-discovered evidence that is material to a claim of self-defense and warrants granting the applicant a new trial. For the applicant to show he is entitled to a new trial, State v. Spann requires that he prove that the newly-discovered evidence:
    - (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; (5) is not merely cumulative or impeaching.

Self-defense appears to be a substantial issue in this case, though the actual victim may have been an innocent bystander. The new evidence is clearly material because, if believed and not refuted, it indicates that the applicant was acting in self-defense and that the victim was killed when an aggressor used the victim as a shield to the applicant's gunfire.

The applicant has the burden of proof. He presented Mr. Bellamy as a witness at the current hearing, and the witness was emphatic in his assertion that the applicant had to shoot to keep from being killed. He also was emphatic that the victim was pulled into the line of fire by the aggressor. There is little evidence on the other side to refute the assertion or to indicate that this evidence could have been obtained earlier. Unfortunately, the transcript of the plea offers very little assistance. The transcript of the previous PCR hearing really does not discuss self-defense.

Based on the facts recited by the State at the guilty plea, a man known as "Jig," had been part of a group that had gone to the applicant's home about 3 weeks prior to the killing and had beaten up, pistol-whipped, and shot toward the applicant. Later, in a completely separate incident, Jig was involved in an assault upon the applicant's sister and the applicant's baby. Prior difficulty is a factor to be considered in evaluating a self-defense claim, as is the propensity of the purported aggressor for violence.

Mr. Bellamy testified at this PCR hearing to the following things: that he knew of these previous incidents wherein Jig had hunted down and violently attacked the applicant and members of his family; he knew that Jig was carrying a weapon the night of the shooting; he knew that Jig was part of a group that had shot a gun at the applicant before; he saw Jig and others in his group (all of whom were known to be violent) walking through a large "after-party" following a concert as though they were looking for someone; that he saw Jig and the group approach the applicant in a menacing manner; that the applicant was leaning against the front of a vehicle in a parking lot; that Jig and members of the group came up to the applicant and made gestures as though they were going to pull weapons on the applicant; that in a split second, the applicant beat them to the draw by pulling a weapon and starting to shoot; that the applicant would have been killed had he not acted as he did; and, that the 15-year-old victim was killed because Jig grabbed the victim upon seeing the applicant's gun and used the victim as a shield.

In the prior PCR hearing, the plea counsel (Mr. Delgado) testified that the applicant had told him that Jig had a gun and that the whole group with Jig was going to "blitz" him. Mr. Delgado testified that self-defense was considered and that the defense team used investigators and others to try to get someone to verify the applicant's claim that Jig had a gun. Mr. Delgado testified, "We went out several times trying to get any one person to say that 'Jig' had a gun. We couldn't do that." Mr. Bellamy did not come forward until after the last PCR.

While the record demonstrates that a claim of self-defense was known to the applicant from the outset and that his attorney tried to get someone to back up that claim, no one would come forward. This court is concerned about granting a new trial because a claim of self-defense can be waived. No law has been cited to the court concerning whether the entry of a guilty plea, where self-defense was specifically mentioned, constitutes a waiver of that defense and prohibits granting a new trial on after-discovered evidence when someone does come forward to corroborate the claim. As Spann notes, the newly-discovered evidence cannot be merely cumulative. Here, the applicant could have gone to trial, told his version of events to the jury, and may have been in a different posture concerning after-discovered evidence. While the court has concerns about granting a new trial when the applicant clearly knew he had a self-defense claim from the beginning and did not present it, the court feels that the issue is one of fundamental fairness.

Plea counsel told the court and undoubtedly advised the applicant that the claim of self-defense could not be established. It was too risky to attempt, in the opinion of plea counsel. The only reasonable reading of this record is that the applicant relied upon that advice to elect to accept the plea bargain. Had he known of the presence of the corroborating witness, he would not have pleaded guilty. The court finds the applicant's testimony to be credible when he states that his decision to waive his claim of self-defense was because he could not get anyone to corroborate the claim. So, despite the fact that there is a question in the court's mind as to whether a person who waives a known claim of self-defense can thereafter assert it when a corroborating witness comes forth with after-discovered evidence, in the absence of authority being cited by either side on this issue, the court feels that fairness dictates a new trial.

In making this decision, the court is aware that it has to rely upon the evidence presented in the current hearing, the prior PCR, and the guilty plea. The court is not privy to the information in the State's file that might refute the claim of self-defense, and the court is aware from the limited information in this record that the applicant has a history of criminal conduct. However, when the transcript of the guilty plea contains more bad information about the person known as Jig (who was not charged in this case) than it does about the person who is pleading guilty, that is a very strong indication that a self-defense claim may exist. When a corroborating witness then comes forward and strongly supports the applicant's position that he was acting in self-defense, it seems fundamentally unfair not to allow that information to be presented to a jury.

If the evidence shows that the applicant pulled a gun and started shooting indiscriminately into the crowd, or if there is any indication of an ability to escape or that self-defense does not apply, the applicant is aware that he faces the possibility of a far more serious sentence on retrial. However, for the purposes of the evaluation now before the court, with the evidence that the court has before it, the applicant has established that the newly-discovered evidence makes it probable that the result would change if a new trial were granted.

As to the elements related to when the information was discovered and whether it could have been discovered through the exercise of due diligence before the plea, the transcript of the guilty plea again shows that the State represented to the court that a hundred or more witnesses may have been present at the scene, but none of them were cooperative. Even a family member of the victim - a victim who may have been an innocent bystander - was not cooperative. There is no indication that the applicant knew or had any reasonable way of determining that Theotis Bellamy was an eyewitness to the incident. Mr. Bellamy testified that he did not come forward because he was afraid of Jig. No law enforcement officer knew of his presence. None of the investigators hired to try to find witnesses ever asked to speak to Mr. Bellamy, indicating that they did not know he was among the throng of people. It is clear that the applicant could not, through the exercise of due diligence, have determined that Mr. Bellamy was an eyewitness who would support his claim of self-defense. Even if he had learned of Mr. Bellamy's presence, it is clear from Mr. Bellamy's testimony that he would not have been cooperative because he was scared of Jig and his group. It was only after Jig went into federal custody that Mr. Bellamy felt safe in coming forward. The prior PCR testimony from Mr. Delgado shows that he and the defense team made a diligent effort to locate witnesses such as Mr. Bellamy prior to the guilty plea.

As for the final element, while the applicant could have taken the stand and asserted facts giving rise to self-defense, and while the State had information that was somewhat supportive of that theory, the court accepts that the availability of an independent eyewitness to corroborate or present the evidence of self-defense is critical in this case, particularly if the applicant feels that he cannot take the stand due to his criminal record. The evidence from Mr. Bellamy is not merely cumulative or impeaching.

d) The applicant has met his burden of proof as to this issue about newly-discovered evidence in the form of eyewitness testimony. He has also met his burden of proof as to prejudice. However, he has failed to meet his burden of proof as to the other issues raised.

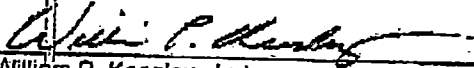
e) The State's assertion that the arguments presented here are barred by the previous decisions of the appellate courts is rejected.

f) As a housekeeping matter, the proposed order should also include the withdrawal of the issue related to the failure to call a female witness (presumably the Correctional Officer) who has now given an affidavit that is not helpful to the applicant's claim. That would not be newly-discovered evidence in any event and would be barred by the one-year rule.

(x) 6. (x) A proposed order is to be submitted by ( ) the Attorney General (x) Applicant's counsel, with a copy to be sent to opposing counsel within ( 30 ) days.

IT IS SO ORDERED.

Date: June 30, 2008

  
William P. Keesley, Judge

Court Reporter: S. Sheppard  
Attorney for Applicant: Tricia A. Blanchette,  
Esq. and Tommy Thomas, Esq.  
Attorney for State: Asst. A.G. Brian T. Petrano

Exhibit

F

**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**

Matthew Jamison, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2008-106026

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Appeal From Richland County  
William P. Keesley, Post-Conviction Relief Judge

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Unpublished Opinion No. 2012-UP-437  
Heard June 21, 2012 – Filed July 18, 2012

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**AFFIRMED**

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Attorney General Alan Wilson, Chief Deputy Attorney  
General John W. McIntosh, Senior Assistant Deputy  
Attorney General Salley W. Elliott, Assistant Attorney  
Brian T. Petrano, all of Columbia, for Petitioner.

Tricia A. Blanchette, Law Office of Tricia A. Blanchette,  
LLC, of Columbia, for Respondent.

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**PER CURIAM:** The State appeals the grant of Matthew Jamison's second petition for post-conviction relief (PCR) arguing the petition was successive and should

have been procedurally barred. The State further contends the PCR court erred in several respects in concluding the petition sufficiently established the existence of after-discovered evidence warranting the withdrawal of Jamison's guilty plea to involuntary manslaughter and the granting of a new trial. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 17-27-70(b) (2003) ("When a court is satisfied, on the basis of the application . . . that the applicant is not entitled to post-conviction relief . . . it may indicate to the parties its intention to dismiss the application and its reason for so doing."); *id.* ("Disposition on the pleadings and record is not proper if there exists a material issue of fact."); *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("All applicants are entitled to a *full and fair opportunity* to present claims in one PCR application.") (emphasis added); *Greene v. State*, 276 S.C. 213, 214, 277 S.E.2d 481, 481 (1981) ("On appeal from an order granting post-conviction relief, our review is limited to whether there is any evidence to support the trial court's findings of fact."); *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1975) ("A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge."); *State v. De Angelis*, 256 S.C. 364, 369, 182 S.E.2d 732, 734 (1971) (stating absent error of law or abuse of discretion, this court will not disturb the trial court's judgment); *State v. Wharton*, 381 S.C. 209, 215, 672 S.E.2d 786, 789 (2009) ("[T]he applicability of the doctrine of transferred intent to voluntary manslaughter cases where the defendant kills an unintended victim upon sufficient legal provocation committed by a third party remains an unsettled question in South Carolina."); *De Angelis*, 256 S.C. at 369, 182 S.E.2d at 734 (considering whether the defendant could withdraw his guilty plea based on after-discovered evidence and stating "there are cases that motions of this character should be entertained and granted in order that wrongs done may be remedied").

**AFFIRMED.**

**PIEPER, KONDUROS, and GEATHERS, JJ., concur.**

Exhibit  
G

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Matthew Jamison, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2012-212996

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from Richland County  
William P. Keesley, Post-Conviction Relief Judge

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Opinion No. 27454  
Heard March 5, 2014 – Filed October 22, 2014

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**REVERSED**

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Assistant Attorney General Brian T. Petrano, of  
Columbia, for Petitioner.

Tricia A. Blanchette, of Columbia, for Respondent.

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**JUSTICE KITTREDGE:** This is a post-conviction relief (PCR) matter. Respondent Matthew Jamison pled guilty to voluntary manslaughter and was sentenced to twenty years in prison. No direct appeal was taken. Respondent's first application for PCR was denied. Respondent filed a second PCR application alleging newly discovered evidence. The PCR judge granted relief, and the court

of appeals affirmed. *Jamison v. State*, Op. No. 2012-UP-437 (S.C. Ct. App. filed July 18, 2012). We reverse.

### I.

This case involves a shooting that occurred at a party one Saturday evening in June 2000, following a series of altercations between apparent rival drug dealers, one of whom was Respondent Matthew Jamison.<sup>1</sup> On the night of the shooting, Respondent encountered the rival group at a concert in Columbia, South Carolina. An eyewitness testified that the group walked past Respondent and "gave him a look like, yeah, we're going to get you tonight." After the concert, Respondent encountered the group again in a parking lot. Hundreds of people were crowded in the parking lot, and an eyewitness saw Respondent leaning against the front of a vehicle in the parking lot. According to Respondent, an individual he referred to as "Jig" pointed at him, and Jig and others with him approached Respondent as if they were going to "blitz" or jump Respondent. Respondent pulled a gun and fired shots towards the group. One of the bullets struck and killed the fifteen-year-old victim, an innocent bystander who was not involved in the ongoing dispute. By all accounts, the intended target was Jig.

Immediately following the shooting, Respondent was apprehended while attempting to flee from the scene. That night, Respondent gave a statement to police in which he admitted firing the gun into the crowd. Respondent was indicted for murder, but his attorney negotiated with the solicitor for Respondent to plead guilty to the lesser included offense of voluntary manslaughter.

Before accepting Respondent's guilty plea, the plea judge engaged in a thorough plea colloquy with Respondent, specifically including the following:

The Court: Now, realizing, [Respondent], that when you plead guilty, you admit the truth of the allegation contained in this indictment against you. You're saying that I had a gun and I shot [the victim] and he died. You understand that?

The Defendant: Yes, sir.

The Court: All right. I tell you that, sir, because you may have some

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<sup>1</sup> Several weeks prior to the shooting, it appears Respondent was attacked in his home by several men whose street nicknames are Jig, Little Thee, Fax, and Butter.

defenses to this charge, [Respondent]. Of course, I have no way of knowing that, but you need to realize that by pleading guilty here today, you give up any defenses you might have. Do you understand that, sir?

The Defendant: Yes, sir.

.....

The Court: Now, [Respondent], I'll ask you, once again, did you commit this offense?

The Defendant: Yes, sir.

The Court: All right. So, [Respondent], once again, you're telling me you are pleading guilty to . . . voluntary manslaughter, because you did, in fact, . . . shoot [the victim] and as a result of your gunshot, [the victim] was killed. You shot him and he died, is that correct?

The Defendant: Yes, sir.

.....

The Court: Now, [Respondent] has anyone promised you anything or held out any hope of reward in order to get you to plead guilty?

The Defendant: No, sir.

The Court: Has anyone threatened you or used force to get you to plead guilty?

The Defendant: No, sir.

The Court: Has anyone used any pressure or intimidation to cause you to plead guilty?

The Defendant: No, sir.

The Court: Have you had enough time to make up your mind as to whether or not you want to plead guilty?

The Defendant: Yes, sir.

The Court: Are you pleading guilty of your own free will and accord?

The Defendant: Yes, sir.

Additionally, during the plea hearing, Respondent's counsel stated the following on behalf of Respondent:

[Respondent] had no individual animus against [the victim]. [The victim] was standing with a group of folks that had been engaged with [Respondent] some time in the past and that night as well and he fired towards that crowd because he thought that they were coming at him and he was coming at them.

And he understands the aspect we know in the law as transferred intent. It was not a self-defense. It may have been a very imperfect self-defense. *But those are the issues that we would have brought forward.* But he had no individual animus. He had no reason. Didn't even know this boy. It was a shot at a crowd of people in a very crowded environment in which this young man was struck and killed and died as a result.

(emphasis added). The plea judge sentenced Respondent to twenty years in prison. No direct appeal was taken.

In his first PCR application, Respondent alleged his guilty plea was not knowingly and voluntarily entered. At the PCR hearing, plea counsel testified the theory of the defense was as follows:

It was that "Jig" had a gun and had come at—had come at [Respondent]. It was a very imperfect self-defense because nobody else sees a gun. There was no other gun found, as I recall it. [Respondent] in his statement to the police says something about—he fails to say to the police, I saw "Jig" with a gun while he was coming

at me. His words were, "they were going to blitz me." That means a whole bunch of them were going to jump him. But later he tells me that "Jig" had a gun. And we wouldn't ever verify that. I mean, I talked to lots of witnesses, went to the scene, had a private investigator. We went out several times trying to get any one person to say that "Jig" had a gun. We couldn't do that.<sup>2</sup>

The PCR judge denied relief. Respondent sought a writ of certiorari, and his counsel filed a *Johnson*<sup>3</sup> petition. Respondent filed a *pro se* petition, in which he raised, for the first time, a newly discovered evidence claim.

Specifically, Respondent claimed that, while serving his prison sentence, he met a fellow inmate who allegedly was an eyewitness to the shooting incident and was willing to provide testimony to support Respondent's self-defense claim. Attached to Respondent's *pro se* petition was an affidavit of Theotis Bellamy, in which Bellamy discussed the prior difficulties between Respondent and the group involved in the incident and stated he believed Respondent would have been further harmed "if things did not happen the way they did" on the night of the shooting. Bellamy's affidavit also stated he previously had an opportunity to give his version of what happened on the night of the shooting; however, he did not share his knowledge with defense investigators earlier because Jig had threatened his family and he was afraid. Ultimately, the court of appeals denied the petition.

While the *Johnson* petition from his first PCR application was pending before the

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<sup>2</sup> Indeed, by all accounts, finding willing witnesses was an extremely difficult task. At the plea hearing, the solicitor's comments revealed the similar difficulty the State encountered in obtaining witnesses:

One of the other tragic parts of this case was that nobody even came forward. Of the hundreds of people at the party, not one was willing to give the police a statement that night as to what they saw and heard. Even when we were preparing this case . . . out there trying to find other witnesses, these people: "Jig" and "Thee," these people that could have been witnesses—"Butter," who is a relative of the victim's, they weren't even willing to come forward and help the State out in this case.

<sup>3</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

court of appeals, Respondent filed a second PCR application alleging newly discovered evidence and attached a second affidavit by Bellamy that was essentially the same as the first.

At the second PCR hearing, Respondent admitted shooting the victim but maintained he was defending himself against the group led by Jig. Respondent claimed he was scared when the group approached him because they had previously shot at and threatened him and jumped on one of his family members. Respondent explained that his guilty plea was influenced by the fact that no witness would come forward and corroborate his contention that Jig had a weapon.<sup>4</sup> Respondent stated he would not have pled guilty but would have insisted on going to trial if he could have presented a stronger self-defense claim.

Bellamy testified at the PCR hearing that he knew the members of the rival group and that they carried guns. Specifically, Bellamy said he saw Jig with a gun in his pants just before the shooting occurred. Bellamy stated he saw the group approach Respondent at the after-party, gesturing "like they're fixing to pull out weapons," and that Respondent shot at Jig before Jig could shoot Respondent. Bellamy stated he did not come forward previously because Jig threatened him and his family, but now that Jig was serving time in the federal penitentiary, he felt more comfortable testifying in court.

The PCR judge granted Respondent relief on the basis of "fundamental fairness" and ordered a new trial. The PCR judge found Respondent met his burden of proving that Bellamy's eyewitness testimony constituted newly discovered evidence and that Bellamy's testimony would likely change the result at trial. In granting relief, the PCR judge stated:

While the record demonstrates that a claim of self-defense was known to the Applicant from the outset and that his attorney tried to get someone to back up that claim, no one would come forward. This

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<sup>4</sup> Respondent explained that although he admitted the shooting from the outset, his counsel advised him that it would be difficult to establish a self-defense claim that would overcome the State's physical evidence and Respondent's statement to police on the night of the shooting, in which Respondent did not claim to be acting in self-defense or explain that he fired shots because he was scared for his life when he saw Jig with a gun.

Court is concerned about granting a new trial because a claim of self-defense can be waived. Yet, no law has been cited to the Court concerning whether the entry of a guilty plea where self-defense was specifically mentioned, constitutes a waiver of that defense and prohibits granting a new trial on [the basis of] after-discovered evidence when someone does not come forward to corroborate that claim. . . . Here, the Applicant could have gone to trial [and] told his version of the events to the jury . . . . While the Court has concerns about granting a new trial when the Applicant clearly knew he had a self-defense claim from the beginning and did not present it, the Court feels that the issue is one of fundamental fairness. . . . Plea counsel informed the court and undoubtedly advised the Applicant that the claim of self-defense could not be established. It was too risky to attempt, in the opinion of plea counsel. The only reasonable reading of this record is that the Applicant relied upon that advice to elect to accept the plea bargain.<sup>5</sup> . . . So, despite the fact that there is a question in the Court's mind as to whether a person who waives a known claim of self-defense can thereafter assert it when a corroborating witness comes forth with after-discovered evidence, in the absence of authority being cited by either side on this issue, this Court feels that fairness dictates a new trial.

The State sought a writ of certiorari, which was granted, but the court of appeals affirmed the PCR judge's order. *Jamison v. State*, Op. No. 2012-UP-437 (S.C. Ct. App. filed July 18, 2012). This Court granted the State's petition for a writ of certiorari to review the court of appeals' decision.

## II.

"This Court gives deference to the PCR judge's findings of fact, and 'will uphold the findings of the PCR court when there is any evidence of probative value to support them.'" *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013) (quoting *Miller v. State*, 379 S.C. 108, 115, 665 S.E.2d 596, 599 (2008)).

"However, we review questions of law *de novo*, and 'will reverse the decision of the PCR court when it is controlled by an error of law.'" *Id.* (quoting *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)).

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<sup>5</sup> Respondent has never raised an ineffective assistance of counsel claim regarding counsel's advice to accept the plea bargain.

A.

The State contends Respondent's newly discovered evidence claim is successive and thus procedurally barred because it was previously raised to the court of appeals in Respondent's *pro se Johnson* petition in the appeal of his first PCR application. We disagree.

The South Carolina Uniform Post-Conviction Procedure Act (PCR Act) allows an applicant to file an application for relief "[i]f the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence." S.C. Code Ann. § 17-27-45(C) (2014) (allowing applications to be filed within one year of the date of actual discovery of the facts or from the date when the facts "could have been ascertained by the exercise of reasonable diligence").

Following Respondent's first PCR hearing and the subsequent order denying relief, Respondent discovered Bellamy was willing to testify to what happened on the night of the shooting. Accordingly, Respondent attached Bellamy's first affidavit to his *pro se* petition to the court of appeals pursuant to *Johnson v. State*. The court of appeals denied the petition, stating in its order the decision was made "[a]fter careful consideration of the entire record as required by *Johnson v. State*."

The State argues the language in the court of appeals' order reflects that its review of all issues was on the merits, and thus, Respondent's second PCR application was successive because Bellamy's affidavit was previously presented to and considered by the court of appeals.

A petition filed pursuant to *Johnson v. State* is the post-conviction relief equivalent of a direct appeal filed pursuant to *Anders v. California*.<sup>6</sup> *Johnson*, 294 S.C. at 310, 364 S.E.2d at 201. This Court recently held that, "[u]nder the *Anders* procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any *preserved* issues with potential merit." *McHam v. State*, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) (citations omitted). Thus, this Court concluded the merits of an unpreserved claim were not considered by the court of appeals on direct appeal pursuant to *Anders*. *Id.* at 475, 746 S.E.2d at 47 (noting issues raised on direct appeal and found to be unpreserved may be the

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<sup>6</sup> 386 U.S. 738 (1967).

subject of a subsequent PCR claim).

Although Bellamy's affidavit was presented to the court of appeals in Respondent's *pro se* petition, it was not properly before the court of appeals because it was not part of the lower court record. *See* Rule 243(f), SCACR (the appendix shall include only matter that was presented to the PCR court). Because the discovery of Bellamy's testimony was not properly before the court of appeals, it was not part of the *Johnson* review. *McHam*, 404 S.C. at 475, 746 S.E.2d at 47. Therefore we find, as a procedural matter, this issue was properly raised in Respondent's second PCR application.

### B.

The State also argues that because Respondent pled guilty, he is therefore not entitled to PCR in the face of newly discovered evidence. Specifically, the State contends that by pleading guilty, Respondent waived any argument relating to potential trial evidence, including claims of newly discovered evidence. Notably, Respondent has never argued that his guilty plea was entered involuntarily or unknowingly or that he pled guilty as a result of ineffective assistance of counsel; rather, the sole basis upon which Respondent has claimed to be entitled to PCR was because of the newly discovered evidence of Bellamy's testimony. Thus, the narrow issue presented to this Court is whether and to what extent an otherwise valid guilty plea may be vacated in PCR proceedings on the basis of newly discovered evidence.

Traditionally, in South Carolina, "[t]o obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." *McCoy v. State*, 401 S.C. 363, 368 n.1, 737 S.E.2d 623, 625 n.1 (2013) (quoting *Clark v. State*, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993)).

~~The State contends the PCR judge committed an error of law in applying this traditional, five-factor newly discovered evidence test in evaluating Respondent's PCR claim. Specifically, the State argues this traditional five-factor test applies only where a defendant has gone to trial and was convicted—not where a defendant pled guilty. The State further contends that, during the plea colloquy, Respondent waived his right to have a trial and present any defenses, and therefore,~~

Respondent may not subsequently raise a PCR claim on the basis of newly discovered evidence relating to a claim of self-defense.

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "A guilty plea represents a break in the chain of events which has preceded it in the criminal process." *Id.* at 332, 737 S.E.2d at 486 (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). By entering a guilty plea, "[a]n accused [] waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions." *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citation omitted). "A plea of guilty is an admission or a confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury." *State v. Fuller*, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970) (citations omitted); see *North Carolina v. Alford*, 400 U.S. 25, 37 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Rice*, 401 S.C. at 332, 737 S.E.2d at 486 (quoting *Tollett*, 411 U.S. at 267).

Nevertheless, the PCR Act provides that "[a]ny person who has been convicted of, or sentenced for, a crime and who claims . . . that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice" is entitled to seek post-conviction relief. S.C. Code Ann. § 17-27-20(A)(4) (2014). Thus, by its plain language, the PCR Act affords "any person" the ability to seek post-conviction relief on the basis of newly discovered evidence—not just individuals convicted and sentenced following trial. Accordingly, we must reject the State's claim that the waiver of trial and admission of guilt encompassed in a guilty plea necessarily preclude post-conviction relief in *all* cases.

We nevertheless acknowledge that a valid guilty plea must be treated as final in the vast majority of cases. Indeed, "[w]hat is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years

later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof." *McMann v. Richardson*, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). "Furthermore, there must be some consequence attached to the decision to plead guilty." *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) ("A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.").

Although we find that a guilty plea does not preclude post-conviction relief following a guilty plea in all circumstances, we nonetheless conclude that the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea. As the Supreme Court of Colorado has noted, in the case of a guilty plea:

[I]t was not an independent trier of fact that determined the defendant's guilt based upon sworn trial testimony—it was the defendant who acknowledged his own guilt. Because of that simple fact, the trial court handling the postconviction proceeding is necessarily in a different position. That court does not have the full record of the prior trial, but it does have the defendant's own statements of guilt. [The traditional, five-factor newly discovered evidence test] presumes that the [PCR] judge is in a position to weigh the new testimony against that provided at the prior trial and assess whether an acquittal verdict would enter based upon new evidence. In the circumstance in which there never was a trial on the charges, the [PCR] court is hampered in that assessment.

*Id.* Indeed, the traditional, newly discovered evidence factors are "difficult, if not impossible to apply when the moving party pleaded guilty instead of standing trial." *In re Reise*, 192 P.3d 949, 954 (Wash. Ct. App. 2008).

Guided by the language of section 17-27-20(A)(4) of the PCR Act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the

entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt. *Cf. Reise*, 192 P.3d at 955 (finding a defendant may withdraw his guilty plea on the basis of newly discovered evidence only when necessary to correct manifest injustice). Such a determination will not be resolved in a formulaic manner, but will necessarily be context dependent.

Turning to the facts of this case, ~~we find there is evidence in the record to support the PCR judge's finding that Respondent could not have discovered Bellamy's testimony prior to pleading guilty? We, however, find the interests of justice do not~~ require that Respondent's guilty plea and sentence be vacated and conclude the PCR judge erred in granting relief. During the thorough plea colloquy, Respondent admitted having a gun and shooting the victim, specifically waived the right to present any defense, and testified that he did so freely and voluntarily. Respondent's PCR testimony reveals that his decision to plead guilty rested on several considerations: the strength of the State's evidence against him, the relative weakness of his self-defense claim, and his counseled determination that it was to his advantage to plead guilty to the lesser charge of manslaughter in order to avoid going to trial on the indicted offense of murder. Although Respondent might have pled differently had he known Bellamy could provide eyewitness testimony, ~~Respondent is bound by his plea and conviction unless he can demonstrate the interest of justice requires that they be vacated.~~ To grant relief under these circumstances would undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea.

"The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision." *Brady v. United States*, 397 U.S. 742, 757 (1970). "A defendant is not entitled to withdraw his plea merely because he

discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." *Id.* Further, the weight and quality of Bellamy's testimony as "evidence of *material* facts, not previously presented and heard" is severely undermined because it pertains not to a theory of self-defense but to one of transferred self-defense. S.C. Code Ann. § 17-27-20(A)(4) (emphasis added). Specifically, Bellamy's testimony would tend to show Respondent fired shots at Jig before Jig could shoot Respondent; however, the victim who died in this case was an innocent, fifteen-year-old bystander, not Jig. The transferability of intent in a self-defense claim has not been recognized in South Carolina, and Respondent does not ask this Court to recognize it now. *See State v. Porter*, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) (noting the theory of transferred self-defense has not been accepted in South Carolina); *cf State v. Wharton*, 381 S.C. 209, 215, 672 S.E.2d 786, 789 (2009) (noting the applicability of the doctrine of transferred intent to voluntary manslaughter cases remains an unsettled question in South Carolina). Therefore, Bellamy's testimony does not constitute evidence of *material* facts within the language of section 17-27-20(A)(4), and Respondent's guilty plea made without the knowledge of Bellamy's potential testimony does not constitute an injustice that would permit Respondent to disavow his guilty plea. Rather, given the totality of the circumstances of this particular case, we find the interest of justice is best served by enforcing Respondent's validly entered guilty plea and upholding Respondent's conviction and sentence.

### III.

Because Bellamy's testimony does not constitute evidence of material facts not previously presented and heard that, in the interest of justice, requires Respondent's conviction and sentence to be vacated, Respondent is not entitled to relief. In reversing the court of appeals, we reinstate Respondent's conviction and sentence pursuant to his guilty plea.

**REVERSED.**

**TOAL, C.J. and HEARN, J., concur. PLEICONES, J., dissenting in a separate opinion in which BEATTY, J., concurs.**

**JUSTICE PLEICONES:** While I find great appeal in the majority's thoughtful "in the interest justice" test, I respectfully dissent as I would adhere to our traditional test to determine whether a post-conviction relief (PCR) applicant is entitled to a new trial based on after discovered evidence. Applying our traditional test, I would affirm the court of appeals as I am bound to uphold the PCR judge's order when there is evidence in the record to support the decision.

Rather than adopt a new test, I adhere to the five-part inquiry we recently affirmed to determine whether a PCR applicant is entitled to a new trial based on after discovered evidence after entering a guilty plea. *See McCoy v. State*, 401 S.C. 363, 368, 737 S.E.2d 623, 625 n.1 (2013). In my opinion, the "interest of justice" is served best by applying the same standard to determine if a PCR applicant is entitled to a new trial, whether the applicant has pled guilty or been convicted by a jury. I fear the majority's new test may give rise to the unintended consequence of dissuading criminal defendants from entering guilty pleas, further contributing to our already crowded General Sessions dockets.

The majority implicitly acknowledges, as I believe it must, that it is adopting a new test. Under the majority's framework, the key inquiry, one which differs substantially from the standard affirmed in *McCoy*, is whether "the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea be vacated." Since this is a new rule, were we to adopt it, I would apply it prospectively. *See Talley v. State*, 371 S.C. 535, 541, 640 S.E.2d 878, 881 (2007). Further, even were we to apply this new test to Respondent, I would find the "interest of justice" standard requires a factual determination and is one which should be made by the PCR judge. Therefore, I would remand to the PCR judge to determine whether Bellamy's testimony constitutes after discovered evidence under this new analytical framework.

As I would apply the standard analytical framework to determine whether the PCR judge properly found Bellamy's testimony constitutes after discovered evidence, I turn to the five factors affirmed in *McCoy*. In my view, the following evidence supports a finding that Bellamy's testimony constitutes after discovered evidence: (1) Bellamy testified that Jig had a gun, and Respondent shot Jig after Jig gestured towards Respondent in a manner that suggested Jig was going to pull out his weapon; (2) Respondent discovered Bellamy's testimony after the entry of his guilty plea; (3) Respondent could not have discovered the testimony before his plea because Jig secured Bellamy's silence by threatening Bellamy and his family; (4) Bellamy's testimony is material because it tends to prove Respondent's claim of

self-defense;<sup>7</sup> and (5) Bellamy's testimony is not merely cumulative or impeaching because no one gave the police a statement as to what happened on the night of victim's murder. *See McCoy*, 401 S.C. at 368, 737 S.E.2d at 625 n.1 (outlining the five factors to determine whether a PCR applicant is entitled to a new trial on the basis of after discovered evidence). Employing our standard analysis, I find there is evidence in the record to affirm the court of appeals' decision even though the PCR judge failed to make explicit findings on the after discovered evidence issue. *See Williams v. State*, 363 S.C. 341, 343-44, 611 S.E.2d 232, 233 (2005) (finding this Court will uphold the PCR judge's findings if there is any evidence of probative value in the record to support them); Rule 220(c), SCACR (stating this Court may affirm any ruling, order, decision, or judgment upon any ground appearing in the record).

I disagree with the majority's finding that Bellamy's testimony is not material on the basis that we have not recognized "the transferability of intent in a self-defense claim." In my opinion, if there is any such doctrine as "transferred self-defense," it has no applicability to this case.<sup>8</sup> Whether a defendant harms an unintended victim while acting in self-defense is irrelevant since the question is whether the

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<sup>7</sup> *See State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

<sup>8</sup> Below is one formulation of the doctrine:

[O]ne who kills in self-defense does so without the mens rea that otherwise would render him culpable of the homicide. . . .

However, if A had no criminal intent with respect to B, as where A is exercising a lawful right of self-defense, [no criminal intent] could exist as to C. It follows, then, that A in shooting C has not committed a criminal act, the essential [sic] of a mens rea being impossible of proof. The inquiry must be whether the killing would have been justifiable if the accused had killed the person whom he intended to kill, as the unintended act derives its character from the intended.

*State v. Clifton*, 290 N.E.2d 921, 923 (Ohio Ct. App. 1972).

defendant's state of mind entitled him to react as he did. *See, e.g., Dickey*, 394 S.C. at 499, 716 S.E.2d at 101. On the other hand, transferred intent permits a jury to find a defendant criminally responsible even though the defendant did not have the "intent" to harm the victim. *See State v. Fennell*, 340 S.C. 266, 271 - 72, 531 S.E.2d 512, 515 (2000) (explaining transferred intent as a legal fiction by which a jury may convict a defendant even though he did not act with the requisite *mens rea* towards an unintended victim). Thus, a defendant need not have a specific "intent" in order to assert a viable claim of self-defense; instead, the only question is whether Bellamy's testimony would have entitled him to a charge on self-defense. Although the answer to this question is undeniably close, and is one that underscores the important gatekeeping function of our PCR judges, I am constrained by our standard of review. *See Williams*, 363 S.C. at 343-44, 611 S.E.2d at 233.

Because I would adhere to the five factor test set forth in *McCoy*, and because I find there is probative evidence in the record to support the PCR judge's findings, I would affirm the court of appeals.

**BEATTY, J., concurs.**