

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

**RECEIVED**  
MAY 11 2021  
SC Court of Appeals

Honorable J. Mark Hayes II  
Case # 2019-CP-11-00535

The State . . . . . Respondant

v

Leonard Lee Foster . . . . . Appellant

NOTICE OF APPEAL

Leonard L. Foster appeal the order of Honorable J. Mark Hayes II  
April 8, 2021 which affirmed his conviction in Common Pleas Court  
Appellant received written notice of the order April 14, 2021

cc Chelsey F. Marto, AAG  
South Carolina Attorney General  
Post office Box 11549  
Columbia S.C. 29211-1549

Brandy W. McBee  
Clerk of Court Cherokee Co.  
Post office Drawer 2249  
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Tonya A. Gee  
Clerk South Carolina Court of Appeals  
Post office Box 11629  
Columbia S.C. 29211

Sincerely  
*Leonard Foster*

Warden, Kenneth Sharp  
Department of Correction  
4444 Broad River Rd.  
Columbia S.C. 29221-4787

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J. Mark Hayes II Circuit Court Judge  
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The State ..... Respondent

v

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Table of Authorities Cases

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## Statement of issues on Appeal

1. Did Common Pleas Court error by summary dismissing habeas corpus for lack of subject matter jurisdiction?
2. Did Common Pleas Court error by granting State's default judgment?

## Procedural History

November 10, 2000 Appellant was arrested for DWI thereafter officer placed him under arrest and failed to administer field sobriety test or read Miranda rights.

November 16, 2000 initial bond was denied thereupon Magistrate denied preliminary hearing and bond.

On November 30, 2000 Appellant plead guilty to driving under suspension 3rd. and receive five months.

On March 21, 2001 and December ? 2001 General Session denied bail for felony d u i whereas no charges was filed relating S.C. Code 56-5-2945

On February 28, 2002 State return direct indictment in violation S.C. Code 56-5-2945 and S.C. Code 56-5-2910

March 14, 2002 Appellant plead guilty to S.C. Code 56-1-1100 whereas trial judge withheld sentencing until the verdict of felony d u i and reckless homicide.

In March 18-20, 2002 jury trial the State excluded incident scene and breathalyzer videos And trial counsel failed to suppress urine sample or object to perjury Thereupon jury return guilty verdict whereas the court impose consecutive sentences 5 years habitual traffic offender, 10 years reckless homicide and 25 years felony d u i.

A timely Direct Appeal was filed whereas Eleanor Duffy Cleary filed Anders brief raising the following

1. Did the trial court err in refusing appellant's motion to strike evidence of prior conviction from the indictment for felony dui where the prior conviction were not necessary to prove the offense and where any probative value was significantly outweighed by the prejudicial effect and where no limiting instruction was given

The South Carolina Court of Appeal affirmed the conviction and dismissed pursuant State v Foster Oo. No. 2004-UP-024

Initial case# 2004-CP-11-0599 application were inadequate whereas Judge Cole suborn perjury and allowed State to continue to violate S.C. Code 16-9-10 and dismiss August 30, 2006 judgment with prejudice

In writ of certiorari Elizabeth Franklin Best filed Johnson petition raising the following

1. Did PCR judge error in finding trial counsel rendered effective assistance of counsel when counsel failed to secure a critical expert would have discredited the sole piece of physical evidence proving the element of intoxication in his felony dui and reckless homicide trial

Appellant filed writ of mandamus with the Supreme Court of South Carolina on August 22, 2013 requesting access to incident scene and breathalyzer videos whereas Appellant tell officer administering breathalyzer He only drank two beers. The Supreme Court dismissed the petition on September 18, 2013 pursuant Key v Currie 305 S.C. 115 406 SE 2d. 356

Appellant filed a pro se Federal habeas corpus in United State District Court of South Carolina on March 19, 2009. In petition Appellant alleged he was being held in custody unlawfully for the following

- (1) denial of motion discovery
- (2) Judicial misconduct
- (3) lack of subject matter jurisdiction
- (4) charge enhancement
- (5) perjury

Thereupon motion of discovery was denied and State's summary judgment was granted on October 16, 2009.

Writ habeas corpus was filed in Common Pleas Court on July 19, 2019 asserting States disregarding of fundamental proceedings in case# 2000-GS-11-1350 and 2002-GS-11-142 deprive General Session of subject matter jurisdiction wherefore March 20, 2002 judgments are void.

## Facts

Prior of 2004-CP-11-599 application all discovery materials was denied thereupon Appellant asserted trial counsel was ineffective and He was being held in violation of the following

- (a) Counsel failed to provide motion of discovery PCR Tran. 40 8-14
- (b) nullity indictment PCR Tran. 21 20-21
- (c) Counsel failed to object to perjury PCR Tran 29 10-17
- (d) Counsel failed to play breathalyzer or patrol car videos PCR Tran 14 1-25
- (e) denial of preliminary hearing and bail
- (f) Counsel failed to suppress urine sample PCR Tran 17 19-21
- (g) destruction of exculpatory evidence PCR Tran 14 1-25

Thereupon Judge Cole left the record open until he had a chance to review videotapes if they were found PCR Tran 53 1-16

In August 30, 2006 order of dismissal with prejudice. Judge Cole allowed the State to continue to violate S.C. Code 16-9-10 by stating Appellant did tell officer at the scene He drank 3 to 4 beers and some liquor shots PCR Tran 4 of 7

May of 2016 Appellant received witness summaries which were trial court's exhibit 3 indicating Appellant refuse to give a statement on the night of the collision substantiate officer Mueller perjured the Court by stating Appellant told him He drank 3 to 4 beers and some liquor shots Tr. Tran 229 6-14

Moreover S.C. Const. Art V section 11 and S.C. Code 17-27-30 is the general trial court with original jurisdiction to hear writ of habeas corpus filed July 19, 2019 in Court of Common Pleas.

## Argument

Pursuant to *Gibson v State*, 329 S.C. 37, 495 S.E.2d. 426, Appellant is entitled to a hearing wherefore the Supreme Court held if petitioner can show upon remand that the PCR is unavailable, all other remedies have been exhausted, and the issues raised now could not have been raised in their prior PCR applications, the lower court may treat the applications as habeas petitions and provide a hearing on their Constitutional claim.

S.C. Const. Art V section 11 and S.C. Code 17-27-30 is general trial court with original jurisdiction to hear writ habeas corpus filed in Court Common Pleas on July 19, 2019.

Sincerely  
Deborah Foster

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PROOF OF SERVICE

I Leonard Lee Foster certify that I have served the Notice of Appeal on below parties by depositing a copy of it in the United State mail postage prepaid on May 5, 2021

cc. Chelsey F. Marto  
South Carolina Attorney General  
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Sincerely  
Leonard Foster

The Honorable Tanya A. Gee  
Clerk South Carolina Court of Appeals  
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May 5, 2021

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Enclosed for filing is a notice of Appeal in above case also included are the following.

- (1) Proof of service of notice of Appeal on the Respondant
- (2) A copy of the judgment which are to be challenged on Appeal
- (3) Witness Summary and PCR tran. p.21 20-21 p.29 10-17 p.14 1-25 p.17 19-21 p.53 1-6 Trial Tran. 229 6-14 August 30, 2006 order p.7 of 7

CC. Chelsey F. Manta  
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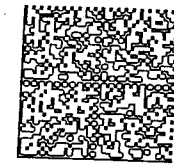
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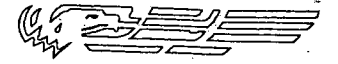
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