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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

Petitioner,

vs.

ONTAVIOUS DERENTA PLUMER,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals commit an error of law that warrants review and correction by ignoring South Carolina's well-established issue preservation requirements and vacating Plumer's concurrent—and unobjected-to—five-year sentence for possession of a firearm during the commission of a violent crime based on a sentencing error that was neither raised to nor ruled upon by the trial judge and, thus, was not properly preserved for appellate review?

STATEMENT OF THE CASE

Procedural History

In December of 2015, Respondent Ontavious Derenta Plumer was arrested following an investigation into a shooting that occurred a few months earlier. In July of 2016, the Greenwood County Grand Jury indicted Plumer for attempted murder, armed robbery, and possession of a firearm during the commission of a violent crime. Prior to trial, the solicitor served timely notice on Plumer indicating the State would seek a sentence of life without parole upon conviction based on Appellant's prior conviction for a "most serious" offense. On February 6, 2017, a jury trial was commenced in the Greenwood County Court of General Sessions with the Honorable Edward W. Miller, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Plumer of attempted murder and possession of a firearm during the commission of a violent crime and acquitted him of armed robbery. Following the verdict, the trial judge sentenced Plumer to terms of imprisonment of life without parole for attempted murder and five years for possession of a firearm during the commission of a violent crime. Plumer then timely filed and perfected an appeal.

On appeal, the Court of Appeals issued a published decision that unanimously affirmed Plumer's convictions and vacated Plumer's five-year sentence for the firearm offense. State v. Plumer, __ S.C. __, 857 S.E.2d 796 (Ct. App. 2021). Thereafter, both the State and Plumer timely filed petitions for rehearing along with returns. On May 20, 2021, the Court of Appeals denied both petitions.

Factual History

On the evening of October 11, 2015, Plumer suddenly pulled out a gun and shot Oshamar Wells, who was working as a marijuana dealer at that time, several times during the course of a

pre-arranged drug transaction. (App'x pp. 18-19; p. 23; pp. 25-29; p. 34; pp. 36-39; pp. 45-46; p. 48; pp. 71-72; pp. 76-78). Fortunately, Wells survived despite sustaining potentially life-threatening injuries, and, in the ensuing investigation into the matter, Plumer, who had rapidly fled from the scene after the shooting while leaving his vehicle behind, was identified as the perpetrator. (App'x pp. 28-29; pp. 32-33; p. 46; p. 48; pp. 123-124; pp. 126-127; pp. 137-138; pp. 178-179; pp. 189-190; p. 200; pp. 218-219; pp. 276-281; pp. 289-290; pp. 293-294). Following that, Plumer was arrested and indicted for a number of offenses in connection to the shooting, and he elected to proceed forward to trial. (App'x pp. 8-9; pp. 188-189; pp. 350-351; pp. 443-448).

At the conclusion of the trial, the jury convicted Plumer solely of attempted murder and possession of a firearm during the commission of a violent crime. (App'x p. 431; p. 450). After that, the trial judge—without objection—sentenced Plumer to concurrent terms of imprisonment of life without parole for attempted murder and five years for the firearm offense.[1] (App'x p. 435).

Subsequently, Plumer appealed while raising a number of issues, including one challenging the propriety of his concurrent five-year sentence for the firearm conviction. (App'x p. 459; p. 477). On appeal, the Court of Appeals affirmed Plumer's convictions but vacated his firearm conviction sentence. (App'x pp. 534-545). In doing so, the Court of Appeals expressly recognized this Court has previously and *consistently* instructed a sentencing issue must be raised during trial in order for it to be properly preserved for appellate review. (App'x p. 543).

[1] Although the trial judge did not expressly indicate Plumer's sentences were to be served concurrently, Plumer's sentences were nonetheless concurrent to one another because the trial judge did not specifically order them to be served in a consecutive fashion. See Tant v. S.C. Dep't of Corr., 408 S.C. 334, 342, 759 S.E.2d 398, 402 (2014) (explaining sentences will run concurrently when two or more are imposed unless otherwise specified).

The Court of Appeals further acknowledged this Court crafted a narrow exception to that general issue preservation rule in State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999), that was applicable only when: (1) the trial judge erred by imposing an excessive sentence; and (2) there was a real threat the defendant would be incarcerated beyond the length of a legal sentence due to the time needed to pursue sentencing relief through the post-conviction relief process. (App'x p. 543). After acknowledging the existence of that narrow exception, the Court of Appeals looked to the specific circumstances of Plumer's case and correctly noted he was not facing a real threat of remaining incarcerated beyond the length of his legal sentence since he was properly sentenced to life without parole for his attempted murder conviction. (App'x pp. 544-545). Nevertheless, the Court of Appeals—while relying on its own authority it characterized as *disapproving of* this Court's decision in Johnston—elected to address Plumer's admittedly-unpreserved sentencing issue and vacated Plumer's concurrent firearm sentence pursuant to its own precedent *and* "as a matter of criminal equity," which was something it left completely unexplained and undefined. (App'x pp. 544-545).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review *preserved* errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016); see State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004) ("In criminal cases, the appellate court sits only to review errors of law which have been properly preserved, i.e., the issue has been raised to and ruled on by the trial court."). If an issue is not properly preserved at the circuit court level, an appellate court ordinarily cannot and will not address the issue for the first time on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved."); State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (recognizing appellate courts "cannot address unpreserved errors").

ARGUMENT

The Court of Appeals committed an error of law that warrants review and correction by ignoring South Carolina's well-established issue preservation requirements and vacating Plumer's concurrent—and unobjected-to—five-year sentence for possession of a firearm during the commission of a violent crime based on a sentencing error that was neither raised to nor ruled upon by the trial judge and, thus, was not properly preserved for appellate review.

Through its published decision in Plumer's case, the Court of Appeals correctly affirmed Plumer's convictions but vacated Plumer's concurrent five-year sentence for possession of a weapon during the commission of a violent crime despite correctly recognizing no objections were raised to that sentence during trial. As support for its decision to do so, the Court of Appeals relied upon its own precedent it characterized as disapproving of this Court's precedent and created an entirely new field of law—"criminal equity"—that has never previously been recognized or applied in South Carolina jurisprudence. By doing so, the Court of Appeals violated South Carolina's well-established issue preservation requirements, failed to faithfully adhere to and apply this Court's precedent as it was required to do, and exceeded the constitutional limits that have been established for it by our state's citizenry. Under such circumstances, the Court of Appeals committed a clear error of law that warrants review and correction by this Court. The State's petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be reversed, and Plumer's unobjected-to sentence should be affirmed until it can be addressed in the proper venue of post-conviction relief.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628

S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is *guaranteed* a fair opportunity "to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

For an issue to be preserved for appellate review pursuant to our state's issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). If an issue is not presented to and ruled upon by the trial judge, it cannot be raised for the first time on appeal. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Critically, as our appellate courts have repeatedly recognized, plain error review is simply not permitted in South Carolina. See State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) ("[T]he plain error rule does not apply in South Carolina state courts."); State v. Burroughs, 328 S.C. 489, 496, 492 S.E.2d 408, 411 (Ct. App. 1997) ("South Carolina has no 'plain error' rule.").

Therefore, based on our issue preservation rules, a criminal defendant is required to contemporaneously object to an alleged sentencing error during trial in order to preserve an issue with a sentence for appellate review. State v. Salisbury, 330 S.C. 250, 276, 498 S.E.2d 655, 669 (Ct. App. 1998). Importantly, a defendant's failure to timely object to or seek modification of a sentence in the trial court precludes him from pursuing the issue on appeal. State v. Winestock, 271 S.C. 473, 475, 248 S.E.2d 307, 308 (1978); see State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not

properly before the court."); State v. Shumate, 276 S.C. 46, 47, 275 S.E.2d 288, 288 (1981) ("A defendant's failure to timely object to or seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal. Appellant's contention was not advanced at the probation revocation hearing where the results were most favorable to him. By failing to object to or seek modification of the revocation sentence in the trial court he is now foreclosed from doing so on appeal." (citations omitted)).

Notably, in State v. Johnston, 333 S.C. 459, 463-464, 510 S.E.2d 423, 425 (1999), this Court crafted a very specific and limited exception to our issue preservation requirements. In that case, Johnston was convicted of conspiracy to possess marijuana with intent to distribute and was sentenced—without objection—to a term of imprisonment of ten years for that offense despite the fact the maximum sentence statutorily authorized was only five years. Id. at 462, 510 S.E.2d 424. Johnston subsequently appealed her sentence, and, on appeal, the Court of Appeals affirmed on issue preservation grounds since no objections were raised during trial. Id. at 461, 510 S.E.2d at 424. Thereafter, this Court granted a petition for a writ of certiorari, reversed, and remanded for resentencing. Id. In doing so, this Court noted it had "consistently held that a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review." Id. at 462, 510 S.E.2d at 425. However, this Court found Johnston's case involved "exceptional circumstance*s*" because: (1) the State had conceded error in regard to the sentence; *and* (2) a "real threat" existed Johnston would be incarcerated beyond the permissible sentencing range for her conviction if she was forced to pursue relief through a post-conviction relief action. Id. at 463-464, 510 S.E.2d at 425 (emphasis added). Based on those *limited* circumstances, this Court remanded Johnston's case for resentencing despite the fact the sentencing issue had not been preserved during trial. Id. at 464, 510 S.E.2d at 425. Importantly though, this Court

expressly cautioned its holding in Johnston's case was based on the "unique" facts involved, which "demand[ed] an expedited result," and was "not intended to disrupt our settled rules on issue preservation and PCR applications." Id. at 464, n. 3, 510 S.E.2d at 425.

Subsequent to the decision in Johnston, the Court of Appeals expressly—and correctly—recognized the limited nature of that case's holding in State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005), and declined to apply Johnston's carefully-crafted exception beyond its express limits. See State v. Passmore, 363 S.C. 568, 585-586, 611 S.E.2d 273, 282-283 (Ct. App. 2005) ("We find the exceptional circumstance carefully carved out by the Johnston court is not present here. [Passmore] has already served the duration of her sentence; therefore, she does not face the threat of continuing incarceration beyond the legal sentence. Johnston does not control. . . . Regrettably, [Passmore] has suffered a violation of her right to a jury trial in this case. However, because she failed to raise an objection at trial, we are compelled to let the unconstitutional sentence stand."). However, at other times, the Court of Appeals irreconcilably addressed unpreserved sentencing issues that did not squarely fall within the limited exception created in the Johnston decision by expanding it to allow plain error review solely when doing so would purportedly serve the interests of "judicial economy." See State v. Bonner, 400 S.C. 561, 564, 735 S.E.2d 525, 526 (Ct. App. 2012) ("[A]n exception to the general rule of issue preservation exists authorizing the appellate court to consider an unpreserved issue in the interest of judicial economy under appropriate circumstances."); State v. Vick, 384 S.C. 189, 202, 682 S.E.2d 275, 282 (Ct. App. 2009) ("While the case at hand does not present a threat that Vick will remain incarcerated beyond the legal sentence as in Johnston, our courts have, in the past, 'summarily vacated' sentences for kidnapping where such sentences were precluded by § 16-3-910 because the defendant received a concurrent sentence under the murder statute." (citations

omitted)); but see Johnston, 333 S.C. at 462, n. 2, 510 S.E.2d at 425 ("[N]one of these cases addressed error preservation. Thus, they provide no support for Defendant's position here.").

In the case sub judice, no objections were raised to or ruled upon in regard to Plumer's sentence during trial, which meant no issues with his sentence were properly preserved for appellate review under settled South Carolina issue preservation law. See Winestock, 271 S.C. at 475, 248 S.E.2d at 308 (explaining a failure to timely object to or seek modification of a sentence during trial precludes a defendant from validly challenging the sentence for the first time on appeal). Likewise, the circumstances involved in Plumer's case did *not* demand an expedited result such that there was a legitimate need to deviate from our state's issue preservation requirements since there was no possibility Plumer would remain incarcerated beyond the length of his lawful sentence if he was forced to pursue relief through a post-conviction relief action in light of the fact the sentence he challenged on appeal was being served alongside a sentence of *life without parole*. See Johnston, 333 S.C. at 463-464, 510 S.E.2d at 425 (addressing an unpreserved sentencing issue where a "real threat" existed Johnston would be incarcerated beyond the permissible sentencing range for her conviction if she was forced to pursue relief through a post-conviction relief action).

On appeal, the Court of Appeals directly—and correctly—recognized the circumstances involved were not analogous to the highly-specific circumstances of Johnston that warranted a deviation from South Carolina's well-established issue preservation requirements since Plumer was not actually facing a threat of remaining incarcerated beyond the length of his legal sentence.[2] See State v. Plumer, 433 S.C. 300, 315, 857 S.E.2d 796, 803 (Ct. App. 2021)

[2] Critically, because there is no "real threat" Plumer will remain incarcerated beyond the length of his aggregate sentence due to the fact he was sentenced to life without parole for attempted murder, a delay in the resolution of his sentencing challenge until it can be raised in the proper

(admitting "there is no 'real threat' Plumer will remain incarcerated beyond the length of his legal sentence"). Nevertheless, the Court of Appeals once again elected to address an unpreserved sentencing error based on its own precedent while further finding it could likewise do so based on the independent ground of "criminal equity," which was something left totally unexplained and undefined. See id. at 315, 857 S.E.2d at 803 ("[W]e believe it is appropriate under these circumstances and as a matter of criminal equity to vacate the sentence pursuant to our holdings in Bonner and Vick."). By addressing and resolving the unpreserved sentencing issue in Plumer's case in the manner it did, the Court of Appeals erred in several important respects such that review and correction by this Court is warranted.

First, the Court of Appeals erred by failing to recognize it was duty-bound by this Court's precedent to find Plumer's sentencing challenge was unpreserved for appellate review. That is true because—despite recognizing the limits of the highly-specific and unique issue preservation exception set out in this Court's Johnston decision—the Court of Appeals found it could address Plumer's appellate challenge to his firearm conviction sentence even though it did not fall within the parameters of the Johnston exception based solely on its own precedent that it described as

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venue of post-conviction relief could not result in any harm at all to Plumer. See Johnston, 333 S.C. at 463-464, 510 S.E.2d at 425 (addressing Johnston's appellate challenge to her sentence despite issue preservation rules because there was a "real threat" she would be incarcerated beyond the permissible sentencing range for her conviction if she was not immediately granted relief). Meanwhile, inconsistent application of procedural rules can itself result in harm because such inconsistency undermines the integrity of the rules and can actually foster non-compliance by removing the disincentives that exist to ensure the purpose of the rules is achieved. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[E]rror preservation has been a critical part of appellate practice in this State for a long time, serving to ensure . . . that we do not reach issues which were not ruled upon by the trial court. . . . [T]hese rules *must also be applied consistently* and not selectively. If our review of the record establishes that an issue is not preserved, then we should not reach it." (emphasis added)); see also I'On, 338 S.C. at 422, 526 S.E.2d at 724 (recognizing procedural rules—through their enforcement and application—ensure the trial court is guaranteed a fair opportunity "to rule properly after it considered all relevant, facts, law, and arguments").

disapproving of this Court's holding in Johnston. See Vick, 384 S.C. at 202, 682 S.E.2d at 282 (addressing an unpreserved sentencing issue related to an improper concurrent sentence despite the fact "the case at hand does not present a threat that Vick will remain incarcerated beyond the legal sentence as in Johnston"). Critically though, the Court of Appeals was *constitutionally* bound to follow this Court's precedent and could not validly ignore that precedent simply because it disapproved of it. See S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents."); cf. Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (Ct. App. 1993) ("Of course, the decisions of the Supreme Court bind this Court as precedents. Thus, any modification or limiting of Abbeville Arms must be done by the Supreme Court." (citation omitted)).

Second, the Court of Appeals erred by creating and then relying upon "criminal equity" as a basis upon which it could and did grant relief in Plumer's criminal appeal. Significantly, the phrase "criminal equity" has *never*—prior to the decision in Plumer's case—appeared even a single time in any published South Carolina decision issued at any point throughout the long history of our state's jurisprudence, and it does not have a defined meaning in South Carolina law due to the fact it has never previously been recognized or applied.[3] See, e.g., Ezell v. Ritholz, 188 S.C. 39, 198 S.E. 419, 422 (1938) (recognizing the existence of "the established rule that equity has no criminal jurisdiction"). In fact, the phrase "criminal equity" does not even appear in Black's Law Dictionary, which is a more-than-a-century-old comprehensive source widely used by judges and lawyers in our nation to determine the accepted definition of any

[3] Notably, during the oral argument held in Plumer's case, the Court of Appeals described "criminal equity" as "a new term" it "*just created*." (State v. Plumer Oral Argument Recording, 34:00 to 34:05) (emphasis added). The Court of Appeals further appeared to suggest it viewed "criminal equity" as something separate and distinct from judicial economy. (State v. Plumer Oral Argument Recording, 29:21 to 29:29).

known legal term regardless of how common or obscure it may be.[4] See Black's Law Dictionary (9th ed. 2009) (containing many definitions for different forms of equity but containing no definitions whatsoever for "criminal equity"); see also United States v. Nason, 269 F.3d 10, 16 (1st Cir. 2001) (recognizing Black's Law Dictionary as a predictably-used source for ascertaining "the most widely accepted legal meaning" of terms). Therefore, "criminal equity"—whatever it may be—was not something that constituted a proper exception to South Carolina's well-settled issue preservation rules, and the Court of Appeals was constitutionally prohibited from manufacturing "criminal equity" as a means by which it could ignore this Court's binding precedent articulating those rules simply because it did not want to follow it in Plumer's case. See S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents."); Johnston, 333 S.C. at 463-464, 510 S.E.2d at 425 (reaffirming the existence of "settled" issue preservation rules that require a challenge to a sentence to be raised to and ruled upon by the trial judge in order to be preserved for appellate review but applying a limited exception to those rules in Johnston's "unique" case based on its "exceptional circumstances" because: (1) the State had conceded error in regard to the sentence; *and* (2) a "real threat" existed Johnston would be incarcerated beyond the permissible sentencing range for her conviction if she was forced to pursue relief through a post-conviction relief action); cf. United States v. Reyes, 945 F.2d 862, 866 (5th Cir. 1991) (explaining there "seems to be no adequate statutory or historical warrant to authorize federal courts to" vacate a criminal conviction on equitable grounds and further instructing: "Absent a clearer statutory or historical

[4] Beyond that, the Court of Appeals did *not* provide a definition or any clear explanation as to what the phrase "criminal equity" meant despite explicitly identifying the phrase as a basis upon which Plumer's sentence could be and was vacated, which only added to the confusion caused by its reliance upon "criminal equity" as a ground for appellate relief in a criminal—as opposed to an equitable—case. Plumer, 433 S.C. at 315, 857 S.E.2d at 803.

basis, an article III court *should not arrogate such power unto itself*. We, too, operate under the law." (emphasis added)).

Third and finally, the Court of Appeals erred by finding "criminal equity"—which, presumably, is something that must surely have been intended to be equitable in nature based on its name alone—would entitle Plumer to relief in light of the principles of equity themselves. Specifically, pursuant to equitable principles, Plumer would not have been entitled to equitable relief because he did *nothing* which ought to have been done to obtain the sentencing relief he sought before seeking it for the first time on appeal. Cf. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011) ("A court of equity should scrutinize the conduct of the plaintiff with the utmost care, to ascertain *he has done everything which ought to have been done* to secure the action requested." (emphasis added)). Instead, Plumer remained silent regarding his sentence at the trial level and raised no objections to the concurrent term of imprisonment he received for the firearm conviction even though he recognized—at least based on the arguments he raised on appeal—that sentence was "expressly prohibit[ed]" by statute.[5] (App'x p. 477). Under such circumstances, Plumer's actions concerning the sentencing issue should not have been rewarded with relief on appeal as a matter of equity since equitable principles would have *denied* him that relief in an equitable action due to his failure to take the steps that ought to have been taken at the trial level when presented with an undeniable opportunity to do so. See Upton v. Tribilcock, 91 U.S. 45, 55 (1875) ("Equity will not assist a man whose condition is attributable only to that want of diligence which may be

[5] Interestingly, Plumer elected *not* to include any facts or statements in his appellate brief that would have alerted the Court of Appeals the argument he raised on appeal in support of his request for sentencing relief was being raised for the first time, which—based on existing South Carolina precedent—would have been exceedingly pertinent to the matter of whether appellate review of the issue was proper. (App'x pp. 458-479).

fairly expected from a reasonable person."); Hemingway v. Mention, 228 S.C. 211, 216, 89 S.E.2d 369, 371 (1955) (instructing "equity aids the vigilant"); Regions Bank, 394 S.C. at 260, 715 S.E.2d at 358 (recognizing the importance of the issue preservation rule requiring an issue to be raised to and ruled upon before it can properly be raised on appeal in a case involving *an action in equity*); see also State v. Penland, 275 S.C. 537, 538, 273 S.E.2d 765, 766 (1981) ("One may not preserve a vice until he learns what the result will be and then, take advantage of the error on appeal."). Accordingly, even if "criminal equity" did actually exist and could somehow legitimately be applied in a criminal case in South Carolina, the Court of Appeals erred by applying it in a manner that trumped our state's issue preservation rules and other controlling precedent since such an application was itself plainly incompatible with well-established principles of equity.[6] See Regions Bank, 394 S.C. at 254, 715 S.E.2d at 355 ("When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent."); cf. Lonchar v. Thomas, 517 U.S. 314, 323 (1996) ("[T]he fact that the writ [of habeas corpus] has been called an equitable remedy . . . does not authorize a court to ignore this body of statutes, rules, and precedents. There is no such thing in the Law, as Writs of Grace and Favour issuing from the

[6] Relatedly, while equity abhors a wrong without a remedy, the remedy of post-conviction relief will remain available to Plumer to obtain the sentencing relief he prematurely sought on appeal through his unpreserved allegation of error even if the Court of Appeals's decision to vacate his sentence at the present juncture is not ultimately upheld. Lane v. New York Life Ins. Co., 147 S.C. 333, __, 145 S.E. 196, 207 (1928); see S.C. Code Ann. § 17-27-20(A)(3) (recognizing one of the express grounds upon which a person may seek and obtain post-conviction relief is when "the sentence exceeds the maximum authorized by law"); Johnston, 333 S.C. at 464, n. 3, 510 S.E.2d at 425 (explaining its decision based on the "unique" circumstances of Johnston's case was "not intended to disrupt our settled rules on issue preservation and PCR applications"). And, a post-conviction action already appears inevitable regardless of what happens on appeal concerning Plumer's unpreserved sentencing error due to Plumer's appellate counsel's representations during the oral argument at the Court of Appeals, which raises some compelling questions about whether any judicial efficiency concerns would truly be served by our long-standing issue preservation rules and precedent being cast aside in Plumer's case. (State v. Plumer Oral Argument Recording, 32:42 to 32:54).

Judges. Rather, courts of equity must be governed by rules and precedents no less than the courts of law. As Selden pointed out so many years ago, the alternative is to use each equity chancellor's conscience as a measure of equity, which alternative would be as arbitrary and uncertain as measuring distance by the length of each chancellor's foot.").

For all the foregoing reasons, the Court of Appeals erred by declining to follow South Carolina's well-established issue preservation requirements and improperly granting relief on an unpreserved sentencing issue, and its decision should therefore be reversed to correct that error. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 694 ("An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved."); Powers v. City of Aiken, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970) ("We have searched the record and agree that the trial judge was not given an opportunity to rule upon this issue, and accordingly, the question is not properly before us. This is a court of review."); cf. State v. Berry, 418 S.C. 500, 503-504, 795 S.E.2d 26, 28 (2016) (vacating the analysis of the Court of Appeals because it addressed an issue that was not properly preserved for appellate review). By doing just that, this Court will ensure its own precedent is faithfully followed as the Court of Appeals is constitutionally duty-bound to do, will promote and protect the important function served by our State's previously well-settled issue preservation rules, and prevent the confusion that will almost certainly flow from the Court of Appeals's creation of and reliance upon the novel and previously-nonexistent field of "criminal equity," which currently remains completely undefined and unexplained despite now appearing in one of our state's published appellate decisions. S.C. Const. art. V, § 9; see Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329-330, 730 S.E.2d 282, 285 (2012) (instructing South Carolina's issue preservation rules *must* be applied in a consistent

manner and affirming those rules serve an "important function"); see also Rule 242(b), SCACR (identifying "novel questions of law" and the existence of a conflicting decision as reasons that will be considered when deciding whether a writ of certiorari should be granted). The State's petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be reversed, and Plumer's unobjected-to sentence should be affirmed until it can be addressed in the proper venue of post-conviction relief.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the State's petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

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