

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2021-000643

The State, Respondent-Petitioner,

v.

Ontavious Derenta Plumer, Petitioner-Respondent.

RETURN TO STATE'S PETITION FOR WRIT OF CERTIORARI

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STATE'S STATEMENT OF QUESTION PRESENTED

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?

MR. PLUMER'S STATEMENT OF QUESTION PRESENTED

The Court of Appeals' opinion vacating the five-year sentence for possession of a firearm during the commission of a violent crime is consistent with the Court's precedent, and the Court of Appeals did not commit an error of law that warrants review by this Court. Additionally, the State was not prejudiced by the alleged error.

STATEMENT OF CASE

A detailed Statement of the Case appears in Mr. Plumer's petition for a writ of *certiorari*, at 1-3, filed with this Court on June 21, 2021. On July 9, 2021, the State filed a cross-petition for a writ of *certiorari*. This return follows.

STATEMENT OF FACTS

A detailed Statement of Facts appears in Mr. Plumer's petition for a writ of *certiorari*, at 3-7, filed with this Court on June 21, 2021.

ARGUMENT

The Court of Appeals' opinion vacating the five-year sentence for possession of a firearm during the commission of a violent crime is consistent with the Court's precedent, and the Court of Appeals did not commit an error of law that warrants review by this Court. Additionally, the State was not prejudiced by the alleged error.

Although acknowledging the absence of a contemporaneous objection to the imposition five-year sentence for possession of a firearm during the commission of a violent crime, the Court of Appeals vacated that sentence based on this Court's holding in *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999). A. 10. The State does not argue the trial court properly imposed this sentence, but rather argues it is not preserved

for appeal and should be addressed in post-conviction relief.¹ See Final Brief of Appellant, A. 118-23. Because it relied on *Johnston*, the Court of Appeals did not commit an error of law.

Our state's statutes for Kidnapping and possession of a firearm during the commission of a violent crime prohibit the trial court from imposing an additional sentence when the trial court imposes a life sentence. S.C. Code Ann. §§ 16-3-910 and 16-23-490(A). Our appellate court's consistently the additional sentence after improper imposition. *E.g. Owens v. State*, 331 S.C. 582, 585, 503 S.E.2d 462, 463 (1998) (see also numerous case cited therein); *State v. Stroman*, 281 S.C. 508, 514 316 S.E.2d 395, 400 (1984); *State v. Copeland*, 278 S.C. 572, 597, 300 S.E.2d 63, 77-78 (1982); and *State v. Vick*, 384 S.C. 189, 202-203, 682 S.E.2d 275, 281-82 (Ct. App. 2009). Thus, the State is not prejudiced by the Court of Appeals holding on this issue.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for a writ of certiorari.

Respectfully Submitted,

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¹ The State does not articulate a valid reason for forcing this issue into post-conviction-relief. The legal principle is not disputed, and there could be no valid strategic reasons for not objecting to a patently illegal sentence.