











**OPINIONS**  
**OF**  
**THE SUPREME COURT**  
**AND**  
**COURT OF APPEALS**  
**OF**  
**SOUTH CAROLINA**

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**ADVANCE SHEET NO. 5**

**February 5, 2007**  
**Daniel E. Shearouse, Clerk**  
**Columbia, South Carolina**  
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Division of Appellate Defense, of Columbia,  
for respondent.

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**JUSTICE MOORE:** We granted a writ of certiorari to review the grant of post-conviction relief (PCR). We reverse.

### **FACTS**

Respondent was indicted for distributing crack cocaine after he sold drugs to an undercover agent on July 26, 2000. He pled guilty on March 21, 2001, and was sentenced to five years as a second offender pursuant to S.C. Code Ann. § 44-53-375(B)(2) (Supp. 2005). The offense used to enhance his status to second offender occurred on July 28, 2000, two days after the offense here. On that date, respondent was searched pursuant to arrest on an unrelated charge and found to be in possession of crack cocaine. He pled guilty to possession of crack on September 26, 2000.

Respondent subsequently brought this PCR action claiming he would not have pled guilty had he known he would be sentenced as a second offender. He argued that because the date of the offense used to enhance his punishment occurred after the date of the offense in this case, he should not have been treated as a second offender. The PCR judge found counsel ineffective for failing to raise the issue at the plea hearing and vacated respondent's plea.

### **ISSUE**

Does the date of the crime determine second-offender status?



In conclusion, because respondent was properly treated as a second offender, the PCR judge erred in finding counsel ineffective. Accordingly, the grant of relief is

**REVERSED.**

**TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ.,**

**concur.**























































































































