

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County
Court of Common Pleas
Brian M. Gibbons, Post-Conviction Relief Judge

S.C. SUPREME COURT

Case No. 2019-CP-42-02536

Gabriel Rios, SCDC #344751.....Respondent,

v.

State of South Carolina,.....Petitioner.

NOTICE OF APPEAL

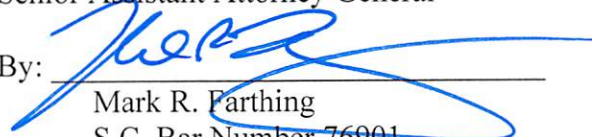
The State of South Carolina appeals the Honorable Brian M. Gibbons’s order granting post-conviction relief, filed January 6, 2023. The State’s subsequent motion to alter or amend was denied by written order filed on February 14, 2023, and received by the State on the same date. Copies of both orders are attached hereto.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

By: 

Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR PETITIONER

March 8, 2023

Other counsel of record:

Rodney Richey, Esquire
Richey & Richey, P.A.
P.O Box 10916
Greenville, South Carolina 29603

ATTORNEY FOR GABRIEL RIOS

06830), armed robbery (count one) and possession of weapon during commission of a violent crime (count two) (2010-GS-42-07831), grand larceny (2010-GS-42-6832),¹ kidnapping (2010-GS-42-6833), and first degree assault and battery (2010-GS-42-6834). Matthew Shealy, Esquire represented Applicant. Assistant Solicitors Timi Poulos and Russell Ghent, Esquires prosecuted the case. On February 26-28, 2013, Applicant proceeded to trial before the Honorable R. Lawton McIntosh, circuit court judge, and a jury. The jury found him guilty as indicted. Judge McIntosh sentenced Applicant to forty years' imprisonment for first degree burglary, thirty years' imprisonment for armed robbery, thirty years' imprisonment for kidnapping, ten years' imprisonment for first degree assault and battery, and five years' imprisonment for the weapons possession charge, with the weapons sentence running consecutively to the remaining charges, which ran concurrently.

Applicant filed a notice of appeal on March 11, 2013, which was perfected by appellate counsel Katherine Hudgins, Esquire filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Respondent made its return on April 4, 2014. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. On March 11, 2015, by written order the South Carolina Court of Appeals affirmed the conviction. *State v. Rios*, 2015-UP-135 (Ct. App. Mar. 11, 2015). The remittitur was issued on April 10, 2015.

Applicant filed his first PCR application on June 3, 2015. Relief was denied by the Honorable Edward Miller, circuit court judge, through written order on March 21, 2017. Applicant filed a timely notice of appeal on July 19, 2017. The South Carolina Court of Appeals denied the petition for writ of certiorari on April 10, 2019. The remittitur was issued on April 26,

¹ This charge was dismissed by the State prior to trial.

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2019.

Applicant filed a federal habeas petition under 28 United States Code Section 2254 on August 15, 2019. On July 13, 2020, the Court Judge adopted the Magistrate's report and recommendation granting Respondent's motion for summary judgement and dismissed Applicant's petition. A motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure was entered by Petitioner and denied by the Honorable Sherri A. Lydon, United States District Judge, on October 5, 2020.

II. Statement of Facts

On August 14, 2010, the alleged victim, Gale Holt, came face to face with an individual when he broke into her home. (Tr. 107-08). Holt claims to have recognized the Applicant because he previously worked for her husband at both his business and the home. (Tr. 108-09). The individual held a knife to her throat, forced her down the hall, and demanded she open the safe. (Tr. 109-11). When she could not open the safe, he tied her arms behind her back and pulled his gun. (Tr. 111-12). The individual demanded money in her purse, rummaged through the purse, and stole her jewelry. (Tr. 112-13). The individual told her not to move or he would kill her. (Tr. 113). The individual took money, the cell phone, and stole the car. (Tr. 113). Holt allegedly identified Applicant to the police when she called the police and identified him in a phot line-up. (Tr. 131-33). Holt testified at trial concerning the events surrounding the incident and allegedly identified Applicant as the perpetrator. (Tr. 131-34).

Investigator Williams testified that he responded to the scene, that Holt described the invader and identified him by name, that he arranged the photo line -up, and stated around what time Applicant was apprehended that night. (Tr. 175-82).

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III. Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Actual & Factual Innocence § 17-27-45(c), Newly Discovered."
 - a. Investigator Lorin Williams was fired for fraud and Applicant, who was innocent of the charges, was only convicted because of fraudulent misrepresentation by Mr. Williams.
2. "Investigative & Prosecutorial Misconduct."
3. "Due Diligence; Due Process."

Before this Court are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections records, the trial transcript, the current PCR application, and prior appeal, PCR, PCR appeals, federal habeas records.

IV. Summary of the Testimony

Applicant testified that he was not guilty of the charges. He stated that identification of him was false. He stated that the investigative officer, Lorin Williams falsely had the victims identify him as the person who committed the robbery. Applicant relied on the 911 call which occurred shortly after the robbery. Applicant in his case played the 911 call. Applicant showed through the 911 call that the Holts did not identify him to the 911 operator. The Holts' described the robbery as an unknown black man. Applicant's testimony was the 911 tape supported his allegation that officer, Lorin Williams falsely had the Holts to identify him as the robber.

Phil Holt testified that he was not present at the time of the robbery. He stated that he talked with his wife about what happened. He stated that he called the 911 operator in the presence of his wife. During this call, he testified that he did not identify Applicant. He says that later after talking with his wife and the investigator he identified Applicant.

Gail Holt, the victim, testified at the hearing. She stated that she had been robbed in her home. She says that she identified the robber as Applicant. She testified that she was in her home



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with her husband when the police were called. She says that her husband was on the phone with the 911 operator in her presence. She also testified that police officers came to her home and talked with her after the robbery.

Matthew Shealy testified that he was unaware of any fraudulent activity committed by Lorin Williams at the time, but thought that this information could have impacted the trial proceedings if discovered before trial.

V. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to grant the application based upon the following findings:

This Court finds Applicant's claim of newly discovered evidence must be granted because Applicant has made a *prima facie* showing he is entitled to relief for his claim. A person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). To prevail, Applicant must show 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 the trial;
- (4) is material; and
- (5) is not merely cumulative or impeaching.



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State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

Applicant discovered that investigator Lorin Williams had been fired because of dishonesty. He discovered the information after his trial and initial post-conviction relief case. This information was not discoverable at the time of his trial, nor could he have discovered it with due diligence. This information is material and not simply cumulative or impeaching. Further, the Court finds that the newly discovered evidence as to the investigator, Lorin Williams credibility is of the nature that it could have affected the outcome of the case. The investigator could have been impeached in a way that could have changed the outcome. Thus, the Court finds that Applicant's claim of newly discovered evidence must be granted.

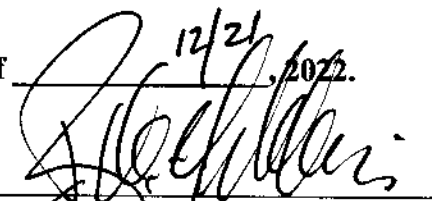
VI. Conclusion

Based on the foregoing, the Court finds and concludes Applicant has established a constitutional violation that would require this Court to grant his application. Therefore, this application for post-conviction relief must be granted. The State has thirty days in which to file an appeal from this order.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is granted; and
2. Applicant must be remanded to the county of Spartanburg for a new trial.

AND IT IS SO ORDERED this _____ day of _____, 2022.


BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit

, South Carolina

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STATE OF SOUTH CAROLINA)
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COUNTY OF SPARTANBURG)
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Gabriel Rios, #344751,)
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Applicant,)
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v.)
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State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-42-02536

**ORDER DENYING RESPONDENT'S
MOTION TO RECONSIDER GRANTING
POST-CONVICTION RELIEF**

This matter comes before the Court by way of Respondent's motion to reconsider the granting of post-conviction relief pursuant to SCRPC 59(e). The Applicant filed his application for post-conviction relief July 17, 2019, on the grounds of newly discovered evidence and an evidentiary hearing was held October 18, 2022, at the Spartanburg County Courthouse. Following the evidentiary hearing, this court granted relief finding Applicant established newly discovered evidence concerning the alleged fraudulent activity by investigator Lorin Williams, which led to his firing, is of the nature that it could have affected the outcome of the case. Subsequently, the Respondent brought this motion for reconsideration, and the matter was heard February 13, 2023, at the Spartanburg County Courthouse. Following oral argument of counsel as well as review of the trial transcripts and the motion itself, the court respectfully denies the Respondents motion.

IT IS SO ORDERED.

February 13, 2023



Brian M. Gibbons
Circuit Judge

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SEVENTH JUDICIAL CIRCUIT
SPARTANBURG, SC