

State of South Carolina
Beaufort County

Charles W. McCormick
326467

V.

State of South Carolina

In the Court of Common Pleas
CASE NO: 2022-CP-07-00474

Motion and response
to Conditional order to
dismiss.

Petitioner Charles W. McCormick in response
to Conditional order to dismiss.
Petitioner Charles W. McCormick would request
this Court, The Honorable Judge Robert J. Bonds
to grant Petitioners application for Post-Conviction
Relief.

Facts

There are issues of material facts that do
exist and should be addressed.

Petitioner understands the Court disfavor
successive PCR applications. Petitioner has done
his best with his limit education 12 grade.

Petitioner was also limited in his access
to the Law Library while at Lieber CI.

One to maybe two hours a week. Until Tablets were issued. Difficult being due diligent.

Weldon V. State 436 S.C. 69, 870 S.E.2d 183 (2021) is new case law ruled on by the South Carolina Supreme Court. October 6, 2021 Petitioner filed his application for second PCR March 17, 2022 and was well within the one year limit on new grounds.

The intent of the Weldon Court was the witness should have testified. There is no ruling that this Weldon case law is not applicable retroactively,

Detective Bromage testimony was I was at a different place, Red Hot Momma's restaurant. Transcript Page 135 line 8.

Petitioner was engaged with five patrons there the night in question, one bartender, one woman and three men.

These witnesses should have and could have testified, that petitioner was never bleeding. Did not smell of smoke or gasoline.

Lack of this testimony. Prejudice the jury.

Had these witnesses been allowed to testify

A reasonable jury could have reached a

verdict of reasonable doubt.

Winship 397 US.358 (1970)

The Due Process Clause protects against conviction except proof beyond a reasonable doubt of every fact necessary to constitute the crime which petitioner is charged.

There was no overwhelming evidence.

Petitioner never discharged a firearm that night. The SLED agents testimony was false and misleading to the jury. The agents report clearly states inconclusive for GSR.

The agents testimony prejudice the jury. Petitioner was charged with possession of a firearm during a violent crime. No firearm was produced at trial. Petitioner never had a slouch firearm. No GSR on clothes or person.

Francis v. Franklin 471 US.307

Due process requires prove every element of criminal offense beyond a reasonable doubt.

DNA evidence

Petitioner lived in our home for at least two years. My DNA would be everywhere. It's now known as touch DNA. This was brought to Judge Mullens attention at a virtual hearing Dec. 16, 2020

This hearing arose out of a Motion for Cause
petitioner filed. The state had not answered
petitioner application or his motion. 4 yrs. 3 months
As of today 5 1/2 yrs. The State has violated
Article 3 Preservation of evidence.

Statue 17-28-320 (A)(B)(C)

Solicitor violation 17-25-45 (F)(H) State v. Johnson
522 SE2d. (2005)

Sentencing wrong 17-25-45-50-310

At this virtual hearing petitioner also explained
to Judge Mullen there was no paper work or
chain of custody of fingernail clippings (5 days)
and none for my clothes for (17 days).

All the statue's listed are mandated by the
General Assembly and the Constitution of
South Carolina. The Law. Providing Petitioner
Due process, equal protection and fundamental
FAIRNESS

Petitioner also had filed a Motion to resentence,
modific, amend, vacate.

Schlop v. Delo 513 us. 290

This filing is for a fundamental
miscarriage of Justice.