

RECEIVED

STRATOS LAW LLC

MAR 17 2014

Milton D. Stratos

S.C. SUPREME COURT

1041 Johnnie Dodds Blvd., 14-A
Mt. Pleasant, SC 29464
843.216.7739
(f) 843.216.0804
www.stratoslaw.com

March 11, 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: The State, Respondent, v. Norris Earl White, Appellant, Case No. 2010-CP-10-9745.

Dear Mr. Shearouse:

Pursuant to the Court's Order regarding Respondent's Motion to Strike, please find enclosed the original and six (6) copies of Petitioner's Amended Appendix, and proof of service of the same. Please feel free to reach me with any questions or concerns. Thank you for your time and attention.

With kindest regards, I am

Sincerely,



Milton D. Stratos
Attorney for Petitioner

MDS/amd

cc: Office of Attorney General
Attn: Ashleigh Wilson
Post Office Box 11549
Columbia, South Carolina 29211
(803)734-3737
Attorney for Respondent

RECEIVED

MAR 17 2014

CERTIFICATE OF SERVICE


S.C. SUPREME COURT

The undersigned hereby certifies that a true copy of the foregoing **Reply to**
Respondent's Return has been served upon the following parties by delivery or
by placing the same in the United States mail, first class postage prepaid,
addressed to the following as shown below this 11 day of March 2014.

South Carolina Supreme Court
Clerk of Court
Attn: Della White
PO Box 11330
Columbia, SC 29211

Ashleigh R. Wilson
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211
Attorney for Respondent

STRATOS LAW, LLC



BY:

Malena Dinwoodie, Paralegal

**PETITION FOR A WRIT OF CERTIORARI
IN POST-CONVICTION RELIEF ACTIONS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2012-212672

Norris Earl White,

Petitioner,

v.

State of South Carolina,

Respondent.

AMENDED APPENDIX

ALAN WILSON
Attorney General

Ashleigh R. Wilson
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1589

ATTORNEYS FOR RESPONDENT

MILTON D. STRATOS

Stratos Law, LLC
1041 Johnnie Dodds Blvd.
Site 14A
Charleston, SC 29464

ATTORNEY FOR PETITION

INDEX

Transcript of the Trial(CD)
Application for Post-Conviction Relief1
Return to the Application10
Transcript of the Post-Conviction Relief Hearing15
Memorandum in Support of PCR30
Order of Dismissal36
Order of Continuance.....41
Motion for New Trial42
Uniform Traffic Ticket45

[The remaining portion of the Appendix is composed of a copy of the documents listed in the Index.]

STATE OF SOUTH CAROLINA

COUNTY OF

Norris Earl White Jr. Plaintiff(s)

vs.

The State of South Carolina Defendant(s)

(Please Print)

Submitted By: Milton D. Stratos

Address: 1041 Johnnie Dodds Blvd, 14A Charleston SC 29404

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

10-CP-10-9745

SC Bar #: 7972

Telephone #: 843-216-7739

Fax #: 843-216-0804

Other:

E-mail: milt@stratoslaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstato Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature: [Signature]

Date: 11.24.2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2010 NOV 24 3M 11:38

IN THE COURT OF COMMON PLEAS

10-CP-10-9745

Norris Earl White Jr.
Full name and prison number (if any) of Applicant

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention City of North Charleston
2. Name and location of Court which imposed sentence City of North Charleston, Municipal Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Ticket Number: 83928 EN
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/25/2009, Fine of \$470.00

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Bench trial, finding of guilty.

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I was not fully aware of my right to appeal, and the evidence upon which post-conviction relief is based was not known before, during, or immediately following the time for appeal.

(b) Dispositive evidence was not available nor immediately discoverable after the exercise of reasonable diligence before, during, or following trial.

(c) Additionally, at the close of bench trial I told the judge that I would like to appeal the ruling. I also asked the judge how to effect an appeal. The magistrate judge related that I could not appeal the decision without paying the fine.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) There exists evidence of material fact, not previously presented and heard, which requires vacation of the conviction or sentence in the interest of justice.

(b) The relief requested is based upon evidence discovered within one year after sentencing and the evidence could not have been discovered earlier by exercise of reasonable diligence.

(c) Newly discovered video evidence speaks plainly to petitioner's innocence, and denying relief would result in patent injustice and a denial of fundamental fairness.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Officer Shivers, the arresting officer, provided false testimony to support a wrongful arrest, lacking in probable cause, and later a finding of guilt. Real and uncontroverted evidence in the form of a video surveillance was not immediately available, nor known at the time of trial. Officer Shiver's bias and false testimony supported a finding of guilt.

(b) Following trial, a complaint was filed with the City of North Charleston, Police Department, Internal Affairs, citing civil rights violations and police misconduct in instituting petitioner's arrest and later perpetrating a fraud upon the court providing false testimony. After several months it was discovered that Internal Affairs had located a video recording of the arrest and the events leading up to arrest. Petitioner attempted to obtain a copy of said video evidence, however his demand was denied by both the owner of the video as well as North Charleston Police Department. At this point in time Petitioner did not know exactly what the video surveillance may have captured at the time of the arrest. A copy of the video evidence was obtained only after hiring an attorney and service of a subpoena duces tecum.

(c) The newly discovered video evidence reveals that the arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. Conversely, the evidence is dispositive of wrongful arrest and a gross miscarriage of justice.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____

- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Petition is based upon newly discovered evidence. The actual discovery of the content of said material evidence immediately preceeds this petition for post-conviction relief.
- (b) Evidence of material fact was not evident, available nor discoverable prior to, during or subsequent to trial.
- (c) Video evidence was discovered only after an investigation conducted by Internal Affairs, City of North Charleston Police Department.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No.
- (b) your trial, if any? No.
- (c) your sentencing? No.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Milton D. Stratos
- ii. 1041 Johnnie Dodds Blvd., Suite 14-A
- iii. Mt. Pleasant, SC 29464

(b) the proceedings at which each such attorney represented you:

i. Mr. Stratos was hired to assist in the retrieval of newly discovered evidence and post-conviction relief. Thus, to this date, Mr. Stratos has not represented me in any proceedings.

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of the conviction or sentence in the interest of justice, and expungement and destruction of arrest records, and reimbursement for funds used to obtain a favorable ruling. In the alternative, petitioner request a new trial based upon newly-discovered evidence.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)
)
County of Charleston)

VERIFICATION

I, Earl Norris White Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Handwritten signature]

SWORN to and subscribed before me this 23rd
day of November, 2010.

[Handwritten signature] (L.S.)
Notary Public

My Commission Expires: 12-4-2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Norris Earl White, Jr.,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2010-CP-10-9745
 RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 24, 2010, would respectfully show this Court:

I.

The Applicant is not presently confined in the South Carolina Department of Corrections. On November 8, 2009, the Applicant was arrested and issued a uniform traffic ticket (#83928 EN) for disorderly conduct. On November 25, 2009, Applicant appeared at the Municipal Court for the City of North Charleston and proceeded to trial, after which the magistrate judge found him guilty as charged for disorderly conduct. The presiding judge imposed a penalty of \$470. Upon information and belief, Applicant did not appeal the conviction or the fine.

Attached herewith and incorporated herein are the PCR application, the uniform traffic ticket, and the case history from the North Charleston Municipal Court. The Respondent has been unable to obtain the trial transcript.

II.

The Applicant alleges the following grounds for relief:

1. There exists evidence of material fact, not previously presented and heard, which requires vacation of the conviction and sentence in the interest of

justice. Officer Shiver, the arresting officer, provided false testimony to support a wrongful arrest, lacking in probable cause, and later a finding of guilt. Real and uncontroverted evidence in the form of a video surveillance was not immediately available, nor known at the time of trial. Officer Shiver's bias and false testimony supported a finding of guilt.

2. The relief requested is based upon evidence discovered within one year after sentencing and the evidence could not have been discovered earlier by exercise of reasonable diligence. Following trial, a complaint was filed with the City of North Charleston, Police Department, Internal Affairs, citing civil rights violations and police misconduct in instituting Applicant's arrest and later perpetrating a fraud upon the court providing false testimony. After several months it was discovered that Internal Affairs had located a video recording of the arrest and the events leading up to arrest. Applicant attempted to obtain a copy of said video evidence, however his demand was denied by both the owner of the video as well as North Charleston Police Department. At this point in time Applicant did not know exactly what the video surveillance may have captured at the time of the arrest. A copy of the video evidence was obtained only after hiring an attorney and service of a subpoena duces tecum.
3. Newly discovered video evidence speaks plainly to Applicant's innocence, and denying relief would result in patent injustice and a denial of fundamental fairness. The newly discovered video evidence reveals that the arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. Conversely, the evidence is dispositive of wrongful arrest and a gross miscarriage of justice.

III.

The Applicant alleges that newly discovered evidence exists in that video evidence discovered after trial reveals that his arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. An applicant requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). The Applicant has not shown that the alleged evidence meets all of the requirements for after-discovered evidence. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The relief Applicant seeks is a vacation of the conviction or sentence in the interest of justice, expungement and destruction of arrest records, and reimbursement for funds used to obtain a favorable ruling. In the alternative, Applicant requests a new trial based upon newly discovered evidence. Respondent submits that expungement and reimbursement are not available remedies in a post-conviction relief application. The post-conviction relief court does not have the authority to award monetary damages or to dismiss all charges or vacate all sentences with prejudice. Rather, Applicant's only remedy in this matter is a new trial.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

August 11, 2011.

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Earl Norris White,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 10-CP-10-9745
)	
State of South Carolina,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing was held the above-captioned action on May 24, 2012, before The Honorable Kristie Harrington, in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Milton Stratos, Esq.
 STRATOS LAW FIRM
 1041 Johnnie Dodds Blvd, Ste 14A
 Charleston, SC 29464
 Appearing for Earl Norris White

Karen Ratigan, Esq.
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, SC 29211-1549
 Appearing for State of South Carolina

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: I understand that this
2 was an issue that was before Judge Jefferson; is
3 that correct?

4 KAREN RATIGAN: Yes, Your Honor. I
5 wanted to just kind of put forth where I believe
6 that the State is at right now. I do know that
7 Mr. Friedman used to handle this Circuit and now
8 he's in Virginia. Uh, -- based on some notes in
9 his file and a conversation that I've had with
10 him, he indicated to me that this matter was on
11 the PCR docket back in September of last year
12 (sic) and that Judge Jefferson and counsel for
13 the Applicant had a discussion about whether or
14 not it was a proper PCR issue. That Judge
15 Jefferson kind of intimated that an after-
16 discovered evidence Motion in the magistrate
17 court would probably be the proper way to
18 proceed. There are some notes in the file that
19 it was determined that such a Motion was filed
20 and set in May 2011 (sic), but that no one
21 showed up. Counsel told Judge Jefferson that "I
22 did not have notice of that hearing."

23 The notes and Mr. Friedman's
24 indications to me were that Judge Jefferson then

1 spoke with the courts there and, uh, instructed
2 counsel to contact Judge Coleman and have the
3 hearing reset at that time, so that the matter
4 could proceed with an after-discovered evidence
5 Motion in magistrate court. Then appeal it to
6 the circuit court to preserve his rights.

7 That is my understanding of what
8 happened in September. Uh, we would simply go
9 back to what we said in the beginning, which is
10 that this is the way that this should proceed.
11 I am not sure that it is the way that it has
12 proceeded.

13 THE COURT: Evidently not, otherwise
14 we would not be here.

15 KAREN RATIGAN: Well, again, -- and
16 I haven't -- I do believe that I spoke to
17 counsel the other day and asked if he filed an
18 appeal. I believe that he told me that he had
19 not.

20 The State's position is that under the
21 post-conviction relief procedure act that a PCR
22 is not a substitute for an appeal and that, uh,
23 -- we would simply argue that if this case was
24 not appealed through the circuit court that the

1 issues being raised today, that would be a
2 proper method of challenging it.

3 He can explain more what the issues are
4 before the court, Your Honor.

5 THE COURT: Who was the attorney in
6 North Charleston at the municipal court?

7 MILTON STRATOS: He was not allowed
8 counsel at that time, Your Honor.

9 THE COURT: He was not allowed
10 counsel?

11 MILTON STRATOS: Well, he wasn't
12 advised that he had a right to counsel. And
13 when he indicated to the court that he couldn't
14 afford counsel, they didn't go into any further
15 discussion. I have a copy of the transcript of
16 record -- which it took us two years to get that
17 transcript. I was initially -- my client and I
18 were initially advised that there was no video
19 recording -- I mean, not video but audio. No
20 audio recording of the hearing. Then after we
21 filed under the State's tort claims act, uh, we
22 were then provided, through discovery, a copy of
23 the audio. We just got that in January of this
24 year.

1 THE COURT: The file ---

2 MILTON STRATOS: As well as the ---

3 THE COURT: Then you filed the Motion
4 that everyone seems to indicate ---

5 MILTON STRATOS: We filed a 29(e)
6 Motion.

7 THE COURT: Mr. Stratos.

8 MILTON STRATOS: I'm sorry, Your
9 Honor.

10 THE COURT: Mr. Stratos. I
11 understand that you are an advocate but my court
12 reporter has to write down everything that I say
13 and ---

14 MILTON STRATOS: Yes, ma'am. I
15 apologize.

16 THE COURT: --- everything that you
17 say.

18 MILTON STRATOS: Yes, ma'am.

19 THE COURT: So please do not talk
20 over me and I will try not to talk over you.

21 MILTON STRATOS: Yes, ma'am. Sorry.

22 THE COURT: Have you filed the
23 appropriate Motion that everybody seems to think
24 that you ---

1 MILTON STRATOS: We filed -- we filed
2 a 29 -- we filed a 29(e) -- 29(b).

3 THE COURT: What is the status of
4 that?

5 MILTON STRATOS: The status is that
6 it's been dismissed. Judgment was entered
7 against us.

8 THE COURT: That ---

9 MILTON STRATOS: They -- they --
10 without a hearing, they ---

11 THE COURT: Have you appealed that
12 ruling?

13 MILTON STRATOS: I have not appealed
14 that ruling.

15 THE COURT: Are you going to appeal
16 that ruling?

17 MILTON STRATOS: No, ma'am. We
18 wanted to proceed with this matter.

19 THE COURT: Mr. Stratos, explain to
20 me how this is the appropriate forum.

21 MILTON STRATOS: Under Section 3 of
22 the PCR statute, it seems that after-discovered
23 evidence is a viable -- as well as we're going
24 to raise the attorney -- uh, advisement of

Earl Norris White v State of South Carolina

Case No. 10-CP-10-9745

Hearing of May 24, 2012

Before The Honorable Kristie Harrington

1 having counsel present. But we believe that's
2 appropriate for the PCR court.

3 I mean, certainly there are other
4 avenues that can be taken. Lots of times people
5 give up their right to appeal and proceed on to
6 the PCR court, try to -- where they're arguing
7 ineffective assistance of counsel rather than
8 going through the appeal process.

9 THE COURT: All right. Ms. Ratigan,
10 your response?

11 KAREN RATIGAN: Your Honor, Rule
12 12(b) of the magistrate rules, I don't know if
13 that is the section to which counsel is
14 referring but ---

15 MILTON STRATOS: Right.

16 KAREN RATIGAN: --- that basically
17 provides for an after-discovered Motion before
18 the magistrate court.

19 What I'm given to understand is that
20 the after-discovered evidence they plan on
21 submitting is, in a nutshell, that the officer
22 perjured himself.

23 The State's position is that that's a
24 matter for the trial court, that after-

Earl Norris White v State of South Carolina
Case No. 10-CP-10-9745
Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 discovered evidence is germane to that trial
2 which was conducted back in November of 2009;
3 that the trial judge who heard the trial should
4 be allowed to rule on the potential value of
5 that after-discovered evidence and that his or
6 her ruling on that should be appealed to the
7 circuit court.

8 Again, PCR is not a substitute for
9 issues that can be raised at trial or on appeal.
10 That's Section 17-27-20(b). There are also a
11 multitude of cases that say that, you know, you
12 can't raise anything in a PCR that should have
13 been raised at trial or on appeal. So, again,
14 we would state that this is not the proper venue
15 at this time when there is that separate, proper
16 venue of going through magistrate court.

17 THE COURT: So you're saying that
18 he's never done that, so now he shouldn't have
19 that opportunity?

20 KAREN RATIGAN: Well, the only
21 difference is that he did not file an appeal to
22 the circuit court.

23 The after-discovered evidence may have
24 been in time for the trial but not an actual

Earl Norris White v State of South Carolina
Case No. 10-CP-10-9745
Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 appeal. Magistrate appeals, as Your Honor
2 knows, get appealed to the circuit court.

3 So there's been no appellate ruling on
4 whether that is truly after-discovered evidence
5 or was applicable at trial.

6 THE COURT: Mr. Stratos?

7 MILTON STRATOS: Well, the after-
8 discover evidence that we want to present to
9 this court wasn't even discovered until January
10 of this year. That was all because the State
11 refused to provide us with a copy of the
12 investigation done by the North Charleston
13 Police Department, Department of Internal
14 Affairs, which found that their client (sic)
15 unlawfully arrested my client ---

16 THE COURT: But, Mr. Stratos, is that
17 not the -- so you requested a new trial and that
18 request was denied?

19 MILTON STRATOS: Correct.

20 THE COURT: And then you just stopped
21 with that avenue; is that correct?

22 MILTON STRATOS: Well, we -- we ---

23 THE COURT: It's a yes or no.

24 MILTON STRATOS: (No verbal

Earl Norris White v State of South Carolina

Case No. 10-CP-10-9745

Hearing of May 24, 2012

Before The Honorable Kristie Harrington

1 response).

2 THE COURT: Did you file a notice to
3 appeal?

4 MILTON STRATOS: No, ma'am.

5 THE COURT: Then what I am hearing
6 Ms. Ratigan say is that that precludes you from
7 going forward here today. Is that correct, Ms.
8 Ratigan?

9 KAREN RATIGAN: We take the
10 position, Your Honor, you know, that in a PCR,
11 that if it should have been raised at trial or
12 on appeal then that's the proper thing that
13 should have been done.

14 THE COURT: Mr. Stratos?

15 MILTON STRATOS: Well, I don't agree
16 with that.

17 THE COURT: Right.

18 MILTON STRATOS: Certainly people
19 forego appeals, never appeal their trial at any
20 level, uh, don't ask for a motion for
21 reconsideration or otherwise and just -- that
22 would be the keystone which would allow them to
23 proceed on their PCR action.

24 KAREN RATIGAN: If I may, ---

Earl Norris White v State of South Carolina

Case No. 10-CP-10-9745

Hearing of May 24, 2012

Before The Honorable Kristie Harrington

1 THE COURT: Yes, ma'am.

2 KAREN RATIGAN: The distinction is,
3 for example if somebody decides not to file an
4 appeal, they cannot come into a PCR and argue
5 the trial judge erred in not admitting the
6 evidence -- because that would have been an
7 appellate issue. That's why there is a
8 distinction.

9 MILTON STRATOS: I'm not arguing that
10 the trial judge wouldn't allow evidence that ---

11 THE COURT: Then what are you arguing
12 here?

13 MILTON STRATOS: I am arguing -- I am
14 going to argue here, one, that he had the right
15 to counsel; two, that after his revocation or
16 after the issuance of a bench warrant that he
17 had a right to counsel; and, three, that the
18 after-discovered evidence should be -- that it
19 is so material to the facts of that case that he
20 should be allowed a new trial.

21 THE COURT: Ms. Ratigan, what relief
22 are you seeking? Dismissal of this PCR?

23 KAREN RATIGAN: Yes, Your Honor.
24 And specifically it has been long held that

Earl Norris White v State of South Carolina
Case No. 10-CP-10-9745
Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 litigation of the issue of right to counsel is a
2 -- so then we would just -- is not recognizable
3 under the Act because the Act itself, 17-27-
4 20(b), says that you can't use it as a
5 substitute.

6 We don't have anything further to add
7 at this point.

8 THE COURT: Anything further, Mr.
9 Stratos?

10 MILTON STRATOS: Well, in the case of
11 *Dangerfield v. State*, cited by the Supreme Court
12 back in 2008 where an individual entered a
13 guilty plea to charges without counsel present,
14 he appealed his decision - or filed a PCR on his
15 decision and then appealed that decision. They
16 didn't preclude him from bringing in his post-
17 conviction relief action, although he entered a
18 plea of guilty and never even had a trial.

19 THE COURT: Do you have the citation
20 or may the court have that copy?

21 MILTON STRATOS: I ---

22 THE COURT: Are you familiar with
23 that case?

24 KAREN RATIGAN: Yes, Your Honor. I

Earl Norris White v State of South Carolina
Case No. 10-CP-10-9745
Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 would note that the -- I would note that Mr.
2 Friedman's notes from that September hearing
3 state that Mr. Stratos argued this before Judge
4 Jefferson, who stated her belief that it was a
5 totally different set of facts than this case.
6 So we would simply argue that he's making the
7 same argument a few months later than he
8 originally argued.

9 MILTON STRATOS: There was no finding
10 made there. She agreed to continue ---

11 THE COURT: Counsel! Counsel!

12 MILTON STRATOS: She agreed to
13 continue the matter.

14 THE COURT: I appreciate your zealous
15 advocacy; again, I really do. But please do not
16 interrupt me. Are you going to bring me the
17 citation?

18 MILTON STRATOS: (Tendering).

19 THE COURT: Thank you. Anything
20 else, Mr. Stratos?

21 MILTON STRATOS: No, Your Honor. On
22 *Bell v. State* (phonetic), a 2011 case, ---

23 THE COURT: Okay, here is what we are
24 going to do. I'm going to have you brief this

1 issue for me, Mr. Stratos, because I don't have
2 the ability to read these marked over cases. So
3 you may present to me a brief. I will give you
4 ten days to submit the brief. Please make sure
5 that you present the AG a copy of that brief
6 indicating why you should be allowed to go
7 forward, that it is a recognizable claim under
8 the statute.

9 Ms. Ratigan, if you feel the need to
10 respond, please respond. I will give you the
11 time to respond accordingly. It sounds like
12 you're pretty clear on your position, these
13 issues, and that you're aware of the case law.

14 So, Mr. Stratos, I am going to give you
15 ten days to submit a brief. I will issue a
16 ruling based on those. If we need another
17 hearing, I will bring you back. Thank you.

18 (HEARING CONCLUDED)

19

20

21

22

23

24

Earl Norris White v State of South Carolina
Case No. 10-CP-10-9745
Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 Certificate OF REPORTER

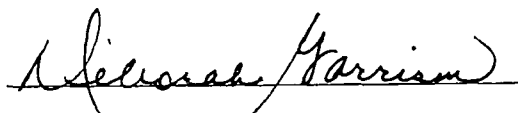
2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable Kristie Harrington on
9 May 24, 2012;

10 I further certify that I am neither kin nor
11 counsel to any of the parties and have no
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9th Judicial Circuit

18

19

20

21

22 Charleston, South Carolina

23

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	CASE NO.: 2010-CP-10-9745
Norris Earl White Jr.)	
)	SUPPLEMENTAL MEMORANDUM OF
v.)	LAW IN SUPPORT OF POST-CONVICTION
)	RELIEF
<u>State of South Carolina</u>)	

Comes Now Norris Earl White Jr., by and through his counsel, Milton D. Stratos, and files this supplemental memorandum of law in support his application for Post-Conviction Relief.

MEMORANDUM OF LAW

Petitioner filed this post-conviction relief application alleging that North Charleston Police Officer Sierra Shivers, acting as both the arresting officer and the prosecuting attorney, misrepresented "facts material to the finding of guilt" to the trial court, averred "that said evidence is tantamount to fraud" and concluded that the fraud perpetrated by Officer Shivers was a "substantial violation of the Defendant's constitutional rights." Applicant contends that evidence discovered after the date of his trial, including but not limited to evidence that Officer Shiver's gave perjured testimony of material facts to obtain conviction, warrants a reversal of the finding of guilt. Petitioner contends his fundamental rights and privileges as set forth in the Constitution of the United States and the Constitution of the State of South Carolina were violated, and accordingly, submits that the violation of his constitutional rights warrants a reversal of his conviction.

FACTS

Applicant was arrested on November 5, 2009 by Officer Sierra Shivers, North Charleston Police Department. He appeared without counsel before the local magistrate, Thaddeus Doughty, on November 24, 2009, and entered a plea of not guilty. The court proceeded with a bench trial and the Defendant was found guilty based on testimony of Officer Shiver's: the Defendant received a suspended sentence, five (5) days in jail suspended on his payment of a Four Hundred, Seventy (\$470.00) Dollars. When the Defendant asked the trial judge how he could appeal his conviction, the Defendant was informed that he

could not appeal his conviction until he paid the fine. When the Petitioner failed to pay his fine under the conditions of his suspended sentence, a bench warrant was issued and Petitioner was arrested and incarcerated without a hearing and held in the Charleston County Detention Center until he was able to pay the fine.

On October 22, 2010, Defendant filed a Motion in the North Charleston Municipal Court for reconsideration pursuant to Rule 29(B) South Carolina Rules of Evidence, requesting that the trial court review the video recording taken at the incident location that Petitioner believe would show that Officer Shiver's statement of fact was inaccurate. A hearing date was scheduled for May 18, 2012; however, Defendant's attorney was going to be on out of town on vacation on the same date and a letter was faxed to the clerk's office for the City of North Charleston requesting that the matter be continued and rescheduled. The North Charleston clerk's office claims not to have received the request to continue and the Motion was summarily dismissed. Defendant did not appeal.

ISSUE

Per the Petitioners filing of his PCR Application, Counsel for the Office of the Attorney General filed for summary judgment alleging that the exclusive remedy for addressing claims that the prosecuting officer gave perjured testimony to obtain a conviction is a matter exclusively within the jurisdiction of the trial court under Rule 29(b), and thus that the Petitioner does not have standing to file an action pursuant to 17-27-45(b).

ARGUMENT

In South Carolina, the PCR Act was "designed to incorporate all rights available under federal habeas corpus," thereby replacing "all other common law, statutory or other remedies." S.C. Code Ann. § 17-27-20(b). Claims raised on PCR must be cognizable under the Post-Conviction Relief Act and the Act recognizes almost any abridgment of a state created right. Specifically, the statute permits the following six categories of claims: (1) the conviction or sentence was in violation of the Constitution of the United States, the South Carolina constitution, or South Carolina state law; (2) the court was without jurisdiction to impose the sentence; (3) the sentence exceeds the maximum authorized by law; (4) there is evidence of

material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; (5) the sentence has expired; probation, parole or conditional release has been unlawfully revoked; or that the applicant is otherwise unlawfully held in custody or other restraint; and (6) the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error previously available under any common law, statutory or other writ, motion, petition, proceeding or remedy. S.C. Code Ann. § 17-27-20(a)(1)-(6).

In *Williams v. Ozmint*, 380 S.C. 473, 671 S.E.2d 600 (S.C. 2008), the South Carolina Supreme Court set forth the depth and degree to which an applicant may obtain relief under the Act:

“At common law, habeas relief was only available to a convicted defendant to attack the jurisdiction of the court imposing the sentence. *See Ex parte Klugh*, 132 S.C. 199, 128 S.E. 882 (1925) (recognizing that habeas corpus is a collateral remedy and calls in question only the jurisdiction of the court where judgment is challenged). However, during the 1950s and 1960s, South Carolina courts greatly expanded the use of the writ in order to ensure that our state afforded prisoners a proceeding where they could assert claims regarding constitutional violations. *See Simpson v. State*, 329 S.C. 43, 44, 495 S.E.2d 429, 430 (1998) (recognizing that the appeals in habeas matters increased between 1950 and 1970 apparently in response to United States Supreme Court decisions relating to the exhaustion of state remedies requirement for federal habeas corpus relief). In 1969, South Carolina adopted our version of the Uniform Post-Conviction Relief Act (UPCA), which drastically limited the availability of habeas corpus. *See James Blume, note, An Introduction to Post-Conviction Remedies, Practice and*

Procedure in South Carolina 45 S.C.L.Rev. 235, 263 (recognizing that following the adoption of the UPCA, post-conviction relief largely replaced habeas corpus relief). The UPCA directed that post conviction relief (PCR) was to encompass the relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral [380 S.C. 477] attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy. *See Simpson*, 329 S.C. at 44, 495 S.E.2d at 430; S.C.Code Ann. § 17-27-20(b) (2007).”

In a PCR proceeding, a defendant collaterally attacks his conviction and may raise any claims of constitutional violations relating to his conviction. *See*, S.C. Code Ann. § 17-27-20(a) (2007). Historically, the South Carolina Supreme Court has favored broadening the scope of persons protected under the Act. Pursuant to S.C. Code Ann. § 17-27-20(a), the Act confers standing to “any person who has been convicted of, or sentenced for, a crime...” *Id.*

The Act does not contain an express “in custody” requirement. In fact, one has standing to apply for PCR if in custody, or the “results of his prior conviction still persist.” *Jackson v. State*, 489 S.E.2d 915, 331 S.C. 486 (1997), *Jones v. State*, 322 S.C. 101, 102, 470 S.E.2d 110, 110 (1996) (emphasis added); see also *McDuffie v. State*, 276 S.C. 229, 277 S.E.2d 595 (1981). Further, the Act does not expressly require the applicant receive a sentence of imprisonment before bringing a PCR action. Under the Act, any convicted persons or those sentenced for the commission of a crime may institute a PCR proceeding. S.C. Code Ann. § 17-27-20(a). A sentence is not limited to a term of imprisonment; instead, it may be either a term in prison or a fine or both. *Id.* A conviction is interpreted as “prove[ing] a person guilty of a crime,” and “a sentence is not limited to a term of imprisonment; instead, it may be either a term in prison or a fine or both.” *Id.*

In 1991 the petitioner in Jackson was convicted by the magistrate of possession of marijuana; he did not appeal his case and he was not incarcerated as a result of the sentence imposed by the trial court. Nonetheless, the S.C. Supreme Court held that Jackson was entitled to proceed with his PCR application alleging a violation of his constitutional rights, if the lower court determined that he was suffering continuing consequences as a result of his alleged invalid conviction, including where sentence is already fully served. *Jackson*, 489 S.E.2d 915, 331 S.C. 486 (1997)

Applicants generally frame PCR actions as one based upon ineffective assistance of counsel. *Al-Shabazz v. State*, 527 S.E.2d 742, 747 (S.C. 2000) (transfer of prisoner not affecting duration of a sentence). However, ineffective assistance of counsel is not required. In fact, the notion that an applicant must assert ineffective assistance of counsel is underinclusive and conflicts with the PCR Act. *Gibson v. State*, 334 S.C. 515, 514 S.E. 2d (1999) (The court addressed a PCR claim where the alleged violation of constitutional rights went beyond ineffective assistance of counsel.)

In *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (S.C. 2006) the Court's focus was not ineffective assistance of counsel, but rather the misconduct of the State's officer. The Court quoting *Kyles* opined, "The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial "resulting in a verdict worthy of confidence." *Kyles*, 115 S.Ct., at 434. In *Riddle*, the Court reversed a death sentence based on the fact that the petitioner discovered after his conviction that the prosecutor had withheld a witnesses statement made shortly before the defendants first trial. Far short of an allegation of fraud, the Court reversed the jury verdict in the sentencing phase of both trials based on the prosecuting attorney's failure to satisfy his affirmative duty to notify defense counsel of the statement. On that single issue the S.C. Supreme Court reversed the PCR courts denial of applicant's application finding that "petitioner's trial was rendered fundamentally unfair by prosecutorial misconduct." *Riddle*, 369 S.C. 39, at 76.

We are concerned here not with the routine PCR issue whether trial counsel was ineffective, but instead with whether prosecutorial misconduct, the presentation of false evidence and state misconduct denied Applicant his constitutional right to due process. Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence. Evidence implicating fraudulent prosecution, state misconduct, and presentation of false evidence were uncovered after obtaining evidence through the filing of a FOIA, request of information. Said evidence was recovered in April 2012, pursuant to the filing of a FOIA request of information with North Charleston Police Department and contemporaneous motion to compel, filed on March 1, 2012. This evidence remained concealed by the State even after the Petitioner filed his PCR application.

The results of the FOIA request are outrageous. The response contained an audible file of petitioner's trial, as well as information known to the prosecution and never disclosed to petitioner prior to or after trial following numerous requests for the same. The results of the FOIA disclose that The City of North Charleston, North Charleston Police Department, Office of Professional conduct, and members of North Charleston Police Department, to include Chief Zumalt, had actual knowledge and evidence of constructive misconduct and violations of due process, and this evidence was not disclosed by the State for nearly three years. In addition, the FOIA results prove that false testimony and false evidence was presented by prosecuting Officer Shiver's, the arresting officer, and that this evidenced was the basis of a guilty finding.

CONCLUSION

The Supreme Court of the United States has consistently held that premeditated misrepresentation cannot be tolerated if we are to maintain any integrity and/or confidence in our judicial system. *Giglio v. U.S.*, 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) ("a prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice."); *U.S. v. Bagley*, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481(1985) (a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment.) *See, State v.*

Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) (Our judicial system relies upon the integrity of the participants.), *Washington v. State*, 324 S.C. 232, 478 S.E.2d 833 (1996) (The failure to correct false evidence is as reprehensible as its presentation).

The case at bar presents an opportunity to redress the most egregious violation of the Constitution of the United States and the State of South Carolina. The conviction and incarceration of an individual based on false testimony of the arresting officer acting as the prosecuting officer of this State is far more than an abuse of the fundamental rights of the Petitioner, it is the desecration of all that our legal system represents. If there is a purpose for the Post-Conviction Relief Act, it is to remedy willful corruption by an arm of the State and to cure the denial of liberty to any citizen based on false testimony. We have here a rare chance to protect the integrity of the Constitution and the elementary principles of justice demand that we should not contemplate the denial of this Applicant's opportunity to be heard.

Accordingly, based on the above authority and just cause, Applicant respectfully requests that this honorable Court grant the Petitioner the right to be heard.

Respectfully submitted,

STRATOS LAW, LLC
MILTON D. STRATOS

Milton D. Stratos, Esq
1041 Johnnie Dodds Blvd., Suite 14A
Charleston, SC 29464
(843) 216-7739
(843) 216-0804 (f)
milton@stratoslaw.com
ATTORNEY FOR APPLICANT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Norris Earl White, Jr.)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-09745

FILED
 2012 JUL -3 PM 4:24
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY *[Signature]*

ORDER

This matter is before the Court on Norris Earl White, Jr.'s (the "Applicant") application for post-conviction relief filed November 24, 2010. The Respondent made its Return on August 11, 2011. A hearing was held at the Charleston County Courthouse on May 24, 2012 at which time the Applicant and his attorney, Milton D. Stratos, were present. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General.

I. PROCEDURAL BACKGROUND

The Applicant is not presently confined in the South Carolina Department of Corrections. On November 8, 2009, the Applicant was arrested and issued a uniform traffic ticket (#83928EN) for disorderly conduct. On November 25, 2009, the Applicant appeared at the Municipal Court for the City of North Charleston and proceeded to trial, after which Magistrate Judge Thaddeus Doughty found him guilty as charged for disorderly conduct. The presiding judge imposed a penalty of \$470.00. Attorney for the Applicant indicated that on October 22, 2010, a Motion for Reconsideration was filed with the North Charleston Municipal Court alleging that a video taken of the incident would show that the arresting officer's statement at the Applicant's trial was inaccurate. This Motion was summarily dismissed because Defense Counsel was not present to argue the

[Handwritten signature]
 7/12/12

Motion.¹ The Applicant did not appeal the conviction or the fine.

II. ALLEGATIONS

The Applicant alleges the following grounds for relief in his Application:

1. There exists evidence of material fact, not previously presented and heard, which requires vacation of the conviction and sentence in the interest of justice. Officer Shiver, the arresting officer, provided false testimony to support a wrongful arrest, lacking in probable cause, and later a finding [of] guilt. Real and uncontroverted evidence in the form of a video surveillance was not immediately available, nor known at the time of trial. Officer Shiver's bias and false testimony supported a finding of guilt.
2. The relief requested is based upon evidence discovered within one year after sentencing and the evidence could not have been discovered earlier by exercise of reasonable diligence. Following trial, a complaint was filed with the City of North Charleston, Police Department, Internal Affairs, citing civil rights violations and police misconduct in instituting Applicant's arrest and later perpetuating a fraud upon the court providing false testimony. After several months it was discovered that Internal Affairs had located a video recording of the arrest and the events leading up to the arrest. Applicant attempted to obtain a copy of said video evidence, however his demand was denied by both the owner of the video as well as North Charleston Police Department. At this point in time Applicant did not know exactly what the video surveillance may have captured at the time of the arrest. A copy of the video evidence was obtained only after hiring an attorney and service of a subpoena duces tecum.
3. Newly discovered video evidence speaks plainly to Applicant's innocence, and denying relief would result in patent injustice and a denial of fundamental fairness. The newly discovered video evidence reveals that the arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. Conversely, the evidence is dispositive of wrongful arrest and a gross miscarriage of justice.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the PCR Application, the uniform traffic ticket, the case history from the North Charleston Municipal Court, arguments of counsel, and the Supplemental Memorandum of Law in Support of Post-Conviction Relief submitted by Applicant's Counsel, and

¹ In the Applicant's Supplemental Memorandum of Law in Support of Post-Conviction Relief, Applicant's Counsel alleges the hearing date for the Motion for Reconsideration was scheduled for May 18, 2012. Because Counsel was going to be out of town on vacation on the same date, he claims he faxed a letter to the Clerk's Office for the City of North Charleston requesting that the matter be continued. The Clerk's Office claims not to have received the request for continuance; therefore the Motion for Reconsideration was summarily dismissed.

2014
7/3/12

makes the following findings of fact and conclusions of law.

Pursuant to the Uniform Post-Conviction Procedure Act (the Act), S.C. Code Ann. §§ 17-27-10 et seq. (2003), an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

However, S.C. Code Ann. § 17-27-20(b) of the Uniform Post-Conviction Procedure Act states that post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." In Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975), the South Carolina Supreme Court reiterated that errors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings. Simmons gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (citing Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981); Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973); Sellers v. Boone, 261

304
 7/2/12

S.C. 462, 200 S.E.2d 686 (1973)). Furthermore, issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel. *Id.* at 9, 430 S.E.2d 520 (citing *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983)).

The allegations raised in the Applicant's PCR application were not directly appealed. Accordingly, this Court finds and concludes this matter should be summarily dismissed for failure to state a claim cognizable under the Act.

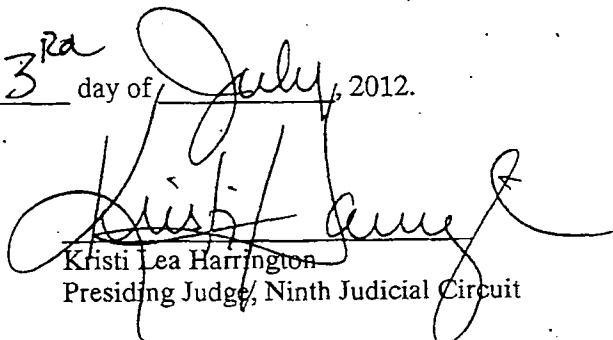
IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented, this Court finds the PCR application must be dismissed based upon the Applicant's failure to articulate a cognizable claim for relief under the Uniform Post-Conviction Procedure Act. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Applicant's post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED this 3rd day of July, 2012.


Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



41
www3.charlestoncounty.org

96



MILTON DEMETRIOS STRATOS
ATTORNEY AT LAW
1041 JOHNNIE DODDS BLVD STE 14A
MT PLEASANT SC 29464-6190

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Continuance

CASE NO: 2010CP1009745

Norris Earl White Jr VS South Carolina State Of

This judgment was entered on the 16th day of September, 2011, and a copy mailed first class on Wednesday, September 21, 2011, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 THE CITY OF N. CHARLESTON,)
 Plaintiff,)
 v.)
 NORRIS EARL WHITE, JR.,)
 Defendant.)

IN THE MUNICIPAL COURT FOR
 THE CITY OF NORTH CHARLESTON

Case Number: 83928EN

RECEIVED
 OCT 22 2010

MOTION FOR NEW TRIAL PURSUANT
 TO RULE 28(b) SCRPC

CLERK OF COURT
 CITY OF NORTH CHARLESTON

NOW COMES the Defendant, Norris Earl White, Jr., by and through his undersigned attorney, on Motion for New Trial pursuant to Rule 28(b) of the South Carolina Rules of Criminal Procedure. The basis for this Motion is that the Defendant was illegally arrested without probable cause or reasonable grounds on or about November 8, 2009 by North Charleston Police Officer Shivers and charged with the criminal offense of Disorderly Conduct. Officer Shivers alleged that the Defendant was committed a breach of the peace in his presence inside the Waffle House located at 2571 Ashley Phosphate Road, Officer Shivers specifically averred that Mr. White was being loud and belligerent and accosting customers and Waffle House personnel.

Mr. White appeared before the Honorable Thad Doughty, Municipal Court Judge for the City of North Charleston, on or about November 25, 2009. At the bench trial of the Defendant, Officer Shivers testified under oath that the Defendant was causing a disturbance inside the Waffle House Restaurant and recited facts consistent with the allegations set forth above. The Defendant denied the said allegations and testified that he did not engage in any act supporting a finding consistent with said charge. Rather, Defendant stated and believes that Officer Shivers misrepresented the facts to the trial court. Based on the evidence presented, the court found the Defendant guilty and sentenced him to a fine of Four Hundred and Seventy (\$470.00) Dollars.

After the trial, the Defendant contacted the Office of Internal Affairs for the City of North Charleston Police Department and filed a complaint against Officer Shivers charging Officer Shivers with making an illegal arrest, and thereby further alleged that Officer Shivers committed fraud having misrepresented the facts before the Municipal Court.

Internal Affairs determined that a video tape of the incident was recorded by camera's at Waffle House and obtained a copy of the video tape. After reviewing the video recording, the North Charleston Police Department's Office of Professional Standards investigating the complaint of misconduct on the part of Officer Shivers determined that "a violation of Department policy occurred and (they have) taken corrective action." Neither the particular violation nor the level of corrective action was disclosed in the letter forwarded to the Defendant, and no action was taken by the North Charleston Department of Internal Affairs to correct Mr. White's criminal conviction for Disorderly Conduct.

On March 29, 2010, the Defendant contacted the office of the undersigned attorney after failing in his attempts to obtain the particularized findings of the North Charleston Office of Internal Affairs and/or a copy of the video recording. Although counsel immediately forwarded notice of his representation and requested a copy of the video and written reports, the Office of Internal Affairs refused to respond even after several attempts were made to acquire these documents. Defendant's frustrations continued until approximately August of 2010 when a copy of only the video recording was provided to his attorney.

In order to insure the accuracy of the allegations set forth herein, on June 23, 2010 counsel forwarded a written request to the Clerk of Court for the City of North Charleston seeking to obtain a copy of the audio recording of the proceeding held before the Honorable Thadeus Doughty. Several more written requests were forwarded to the Clerk between June and September of 2010, and on September 30, 2010, counsel was advised that the recording taken during that proceeding was inaudible and the only account of the findings was the Case History Report. A copy of the report was provided to counsel at that time.

Defendant has knowledge and believes that the video recording of the incident is incontrovertible evidence that he engaged in no action warranting his arrest and that the evidence related by Officer Shivers to the trial court was neither accurate nor consistent with the scene depicted in the video. Furthermore, the video reveals that the testimony of Officer Shivers, under oath before the Honorable Thadeus Doughty, was a gross


misrepresentation of the facts to the level of fraud perpetrated upon the court.

Based on the foregoing, the Defendant now moves before this Honorable Court for new trial pursuant to Rule 28(b) of the South Carolina Rules of Criminal Procedure and for an Order setting aside the finding of the trial court based on after discovered evidence that was in the possession of North Charleston Police, but withheld from the Defendant. But for the due and diligent efforts of the Defendant this evidence would not have been discovered.

Defendant moves to set aside the judgment and for a new trial pursuant to Rule 28(b) of the South Carolina Rules of Criminal Procedure. Defendant avers that the Court's testimony of Officer Shivers was a misrepresentation of the facts material to the finding of guilt, that said evidence is tantamount to fraud, and that a substantial violation of Defendant's constitutional rights, as well as a blatant violation of SC Code 23-17-90, (Illegal Arrest) be sanctioned if relief is not granted allowing Defendant a new trial in this matter.

Defendant now pleads upon this court to grant his Motion for New Trial and setting aside the judgment..

RESPECTFULLY SUBMITTED on this the 32nd day of October,
2010 in the Municipal Court for the City of North Charleston, South Carolina.



MITLON D. STRATOS
ATTORNEY FOR DEFENDANT
1041 JOHNNIE DODDS BLVD., SUITE 14A
MOUNT PLEASANT, SC 29482
OFF: (843)216-7739 FAX: (843)216-0804

Form S-438
Rev. 12/06

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Nches VERSUS

FIRST NAME Nora's MIDDLE NAME Eni LAST NAME White Sr

STREET AND NO. 472 Datto W. Sumi CITY SC STATE SC ZIP CODE 29457

STATE LICENSED SC DRIVER'S LICENSE NO. DL 1988 CL CDL YES NO ORI. LIC. CLASS D

VEH. LIC. NO. STATE MAKE OF VEH YEAR COMB. VEH. AUTO. HAZ. MT. MOPEL MTRCYCLE OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Maha Court STREET AND NO. 2536 Bank St

DATE OF TRIAL 11-22-09 TIME OF TRIAL 10:00 AM CITY Nches STATE SC ZIP CODE 29401

VIOLATION COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO. 13-36-6-7-7

OWNER OF VEHICLE D. ROSSLY Court DATE OF ARREST 11-8-09

ADDRESS OF OWNER 11-8-09 DATE OF VIOLATION 11-8-09

BAIL DEPOSITED None NAME OF ARRESTING OFFICER S. HAVEL RANK PC

PRESENT THIS SUMMONS TO THE TRIAL OFFICER SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

VIOLATOR'S COPY

COUNTY Ch NUMBER 10

BADGE 127 DISTRICT 5

TIME OF VIOLATION 6:30 PM WEATHER CL

DISTANCE IN FEET FROM INTERSECTION 6577

MILES 1 2 3 4

HWY NO. 2 CITY Ch

Lat 33.5 Long -80.5

OFFENSE CODE 86 B.A. LEVEL

83928 EN

54702

5545700 - NCPD CLK A-11