

January 28, 2016

The Honorable Daniel E. Shearouse
Clerk, S. C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

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S.C. SUPREME COURT

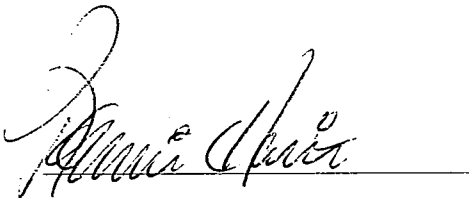
Re: Ronnie Harris, #294716, Petitioner,
v. State of South Carolina, Respondent.
Appellate Case No. 2015-001451

Dear Mr. Shearouse:

Enclosed for filing is two (2) copies of my Petitioner's Response to Counsel's Johnson Brief for the above case.

Please stamp clock and file these matters, and kindly return one (1) copy to me for my records. Your attention to these matters will be greatly appreciated.

Thank you. Sincerely, I am.



Ronnie Harris, #294716, MB-32
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, S.C. 29067
Petitioner

Enc: As stated above

/rh

cc: Karen Ratigan, Esq.
File

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case # 2015-001451

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S.C. SUPREME COURT

Ronnie Harris.....Petitioner.

v.

State of South Carolina.....Respondent.

**PETITIONER'S RESPONSE TO COUNSEL'S
JOHNSON PETITION FOR WRIT OF CERTIORARI**

January 28, 2016

Ronnie Harris, #294716, MB-32
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, S.C. 29067
Petitioner Pro Se

cc: Karen Ratigan, Esq.
Assistant Attorney General
S.C. Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
Attorney for Respondent

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ISSUE PRESENTED

Did the PCR Court err in denying Petitioner Harris a PCR review on the grounds that his application was not filed timely when Petitioner Harris had applied for new DNA testing pursuant to S.C. Code Ann. § 17-28-10 for a more specific identification of the minor's DNA but learned in a November 2013 court hearing that the State had destroyed the evidence in his case which allowed him to pursue another PCR application under S.C. Code Ann. §§ 17-27-45(C) and 17-28-90(B)(6) which Petitioner filed July 8, 2014?

STATEMENT

For purposes of this response, Petitioner hereby adopts and incorporates herein the statement of Petitioner's counsel (Johnson Petition, p. 3-5), as if stated fully here.

ARGUMENT

The PCR Court erred in denying Petitioner Harris a PCR review on the grounds that his application was not filed timely when Petitioner Harris had applied for new DNA testing pursuant to S.C. Code Ann. § 17-28-10 for a more specific identification of the minor's DNA but learned in a November 2013 court hearing that the State had destroyed the evidence in his case which allowed him to pursue another PCR application under S.C. Code Ann. §§ 17-27-45(C) and 17-28-90(B)(6) which Petitioner filed July 8, 2014.

For purposes of this response, Petitioner hereby adopts and incorporates herein the facts presented by Petitioner's counsel (Johnson Petition, p. 6-12), as if stated fully here.

In response, Petitioner would further argue that upholding the PCR Court's denial of review will result in a complete miscarriage of justice. The Access to Justice Post-Conviction DNA Testing Act of 2009 ensures Petitioner a remedy of proving his actual innocence by providing a "more probative result" of DNA testing of otherwise subjective physical evidence. The State's forensic DNA analyst, Dr. Grayson Amick, testified at trial that the minor's DNA "could be skin cells but the level of DNA was more consistent with *probably some kind of bodily fluid*." (emphasis added) (App. 118, In. 1 – App. 122, In. 6). Specifically, Dr. Amick further testified he found no semen on the minor's rape kit (App. 118, In. 13-18).

The circumstantial and identification of the physical evidence as "probably" bodily fluid is subjective, as it posits in the mind of jurors a conclusion of Petitioner's guilt, but without an objective finding based on a more exact science offered by modern DNA testing. Although the State has clearly violated state law by Investigator James Austin's destruction of the physical and biological evidence for this case on March 30, 2005, the PCR Court has chosen to leave Petitioner with no means of redress for the purpose of exoneration.

Despite the minor's allegations that Petitioner "put his thing in her private part, and it hurt" (App. 118, ln. 13-18), the pediatric emergency physician, Dr. John Wilson, examined the minor and found absolutely no tears to the hymen, and no evidence of penetration (App. 89, ln. 5 – App. 93, ln. 24). In fact, the only abnormal findings were the subjective identification of a "milky discharge" from the vagina, which were never identified as semen belonging to Petitioner. And, with only SLED's inaccurate and inconclusive findings made by Dr. Amick regarding the physical and biological evidence—now unfortunately destroyed by the lead investigator of this case—Petitioner's guilt ultimately hinges on the minor's allegations but without any physical or biological evidence to support them. The sole remaining findings of bruises on the minor's breasts should likewise be held as subjective based on Dr. Wilson's foreknowledge of an allegation of a sexual battery; Dr. Wilson was definitely "unsure" as to the allegation of sexual intercourse (App. 87, Ln. 3 – App. 88, ln. 22).

On March 4, 2013, Judge Letitia H. Verdin correctly held "the present case is nearly identical" to that presented in Peloquin v. State, 321 S.C. 468, 470 469 S.E.2d 606, 607 (1996). The Supreme Court in Peloquin held that "no new limitation shall be made to affect existing claims without allowing a reasonable time for parties to bring actions before their claims are absolutely barred." See also Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.2d 900 (1941). Petitioner's claim was "not asserted or was inadequately raised" in the prior PCR because Petitioner had no knowledge the evidence in his case had been destroyed. S.C. Code Ann. § 17-27-90. There is absolutely no evidence the State contacted Petitioner to inform him the evidence was being destroyed, as required by South Carolina law. Therefore, Petitioner should not be penalized for not raising the issue earlier if he was completely and reasonably unaware of it.

CONCLUSION

For the reasons stated above, this Court should grant certiorari and remand for further proceedings.

Respectfully submitted.

January 28, 2016

Kershaw, South Carolina

A handwritten signature in cursive script, appearing to read "Ronnie Harris", written over a horizontal line.

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Petitioner Pro Se

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PROOF OF SERVICE

I certify that I have served the Petitioner's Response to Counsel's Johnson Petition For Writ of Certiorari on the Respondent by depositing a copy of the same in the United States Mail, postage prepaid, on January ____, 2016, addressed to the attorney of record, Karen Ratigan, Esq., Assistant Attorney General, S.C. Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211

January 28, 2016



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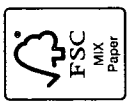
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The Honorable Daniel E. Shearouse
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