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V.

# AMENDED APPLICATION FOR POST-CONVICTION RELIEF

Mr. Pearson and co-defendant Weldon proceeded to a jury trial on May 14 – 18, 2012, in the Clarendon County Court of General Sessions. The trial was held at the Clarendon County Courthouse in Manning, S.C., with the Honorable R. Ferrell Cothran, Jr., presiding. Harry Devoe represented Mr. Pearson, and John Knobeloch represented Weldon. Mr. Pearson and co-defendant Weldon were both found guilty and sentenced to thirty years for burglary 1st consecutive to thirty years for armed robbery (an overall sentence of sixty years), and concurrent sentences of five years

for grand larceny, twenty years for grand larceny, and five years for possession of a weapon during the commission of a violent crime.

### **POST-CONVICTION PROCEDURAL HISTORY.**

#### **Direct Appeal:**

Mr. Pearson filed a timely appeal of his May 18, 2012, convictions and sentences with the South Carolina Court of Appeals (SCCA). Appellate Defender Kathrine H. Hudgins represented him. Arguing the State failed to present substantial circumstantial evidence of his involvement in any of the crimes charged, Mr. Pearson claimed the trial court erred in denying his motion for a directed verdict. The SCCA agreed and reversed Mr. Pearson's convictions and sentences in an opinion dated July 30, 2014, which was refiled on October 8, 2014. *State v. Pearson*, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014). The South Carolina Supreme Court (SCSC) granted the State's petition for a writ of certiorari to review the SCCA's decision. In a March 23, 2016, opinion, the SCSC reversed the SCCA and reinstated Mr. Pearson's convictions and sentences. *State v. Pearson*, 415 S.C. 463, 783 S.E.2d 802 (S.C. 2016).

#### **First PCR Application:**

Mr. Pearson filed a PCR Application on May 27, 2016. (2016-CP-14-240) His amended grounds for relief were:

##### **I. Ineffective Assistance of Counsel:**

1. Trial Counsel had been very ill before and during the trial, recovering from heart issues in addition to his wife being very ill. This contributed to ineffective representation in that trial counsel:
  - i. Did not interview witnesses provided to him by the Defendant before trial and did not call witnesses;
  - ii. Did not enter a Notice of Alibi for the Defendant to the Court after an alibi was provided to him by the Defendant;
  - iii. Did not enter evidence provided to him by the Defendant;
  - iv. Did not speak with the Defendant before trial, other than a brief encounter the weekend before starting the trial;
  - v. Did not investigate the facts of the case; and,
  - vi. Did not move to bifurcate the trial for Defendant.

##### **II. Newly Discovered Evidence:**

1. New evidence that the co-defendant admitted to law enforcement that he did not know the Defendant, and other evidence exculpating the Defendant.

Respondent submitted its Return and Motion for a More Definite Statement on June 9, 2017. An evidentiary hearing before the Honorable Kristi Curtis was convened on July 24, 2018, at the Sumter County Courthouse. Mr. Pearson was present at the hearing and represented by Timothy L. Griffith. An Order of Dismissal was issued by Judge Curtis on November 5, 2018, and filed for record on November 20, 2018. Mr. Pearson's PCR counsel filed a Notice of Appeal. On August 19, 2022, the SCCA issued an Order denying Mr. Pearson's Petition for a Writ of Certiorari. The remittitur was entered on September 14, 2022.

On April 19, 2023, Defendant applied to the North Carolina Center on Actual Innocence for assistance with his claim of innocence.

In June 2024, Mr. Pearson filed a *pro se* PCR Application raising a new evidence claim.

#### **AMENDED GROUNDS FOR RELIEF.**

There exists evidence of material facts, not previously presented and heard, that in the interest of justice, requires the vacation of Mr. Pearson's convictions and sentences. S.C. Code § 17-27-20(A)(4). The evidence of material facts, not previously presented and heard, includes the following:

1. Exculpatory evidence obtained by the Clarendon County Sheriff's Department after reopening their investigation into the robbery giving rise to Mr. Pearson's charges, indictment, and convictions; and
2. Exculpatory evidence obtained by the undersigned in 2024 and confirmed in a June 10, 2025, affidavit signed by co-defendant Victor Weldon. The affidavit completely exonerates Mr. Pearson from any participation in or knowledge of the May 15, 2010, assault and robbery of Edward "Slick" Gibbons in Clarendon County, South Carolina. (Exhibit No. 1)
3. Third Circuit Solicitor, Ernest A. Finney, III's admission that Mr. Pearson is innocent and is entitled to have his convictions and sentences overturned.

#### **The Newly Discovered Evidence:**

As a result of an appeal from an unsuccessful PCR Application (2016-CP-14-002), co-defendant Victor Weldon was granted a new trial. *Weldon v. State*, 436 S.C. 69, 870 S.E.2d 183 (S.C. App. 2021). The State filed an unsuccessful petition for a writ of certiorari to the SCSC. Mr. Weldon was returned to Clarendon County to await re-trial on September 11, 2022.

In January 2023, an investigator for the Clarendon County Sheriff's Office (Clark) visited Mr. Weldon and inquired about his intentions regarding a new trial.<sup>1</sup> Weldon informed Clark that he intended to proceed with a trial. Sometime later, Thompson Kinney, Weldon's attorney, came to present Weldon with a written proffer/plea agreement. (Exhibit No. 2.) Pursuant to that agreement, Victor Weldon agreed he would give law enforcement a complete statement about the events on or around May 15, 2010, the date of the Gibbons robbery, and that in return for providing complete and truthful information, Weldon would receive an eighteen-year sentence.

Weldon accepted the proffer agreement and was subsequently taken to the Clarendon County Courthouse to meet with Solicitor Finney, investigator Clark, and another investigator. Weldon was asked about the robbery and admitted that it was he, together with Kelvin Mellette and Leonard DeShaun Smith, who assaulted and robbed Mr. Gibbons. Weldon was also asked about Michael Pearson. He told the Solicitor and investigators that he did not know Mr. Pearson and that Mr. Pearson was not involved in the robbery.

Weldon agreed to submit to a lie detector test and was taken to the Sumter Law Enforcement Center and administered a polygraph. Weldon states he was asked if he knew the victim ("Slick" Gibbons) before the robbery, and said no. He was asked if he knew Michael Pearson before or after the robbery, and said no. And, according to Weldon, he was also asked about Kevin Mellette and Leonard Smith, and stated that he knew both of them and that they had participated in the robbery together with him. Mr. Weldon reports that he passed the polygraph and that the Solicitor accepted that he was being truthful.

On June 20, 2023, Weldon appeared before the Honorable R. Kirk Griffin at the Clarendon County courthouse in Manning to enter a plea of guilty to armed robbery, burglary 1st degree, and grand larceny under his original indictment (2011-GS-41-068). He was given the benefit of his plea agreement and was sentenced to eighteen years, with credit for all time previously served. Mr. Weldon's expected release date is now November 1, 2025.

Law enforcement communication with Weldon did not end with Weldon's guilty plea. According to Weldon, investigator Clark and another investigator came to the Sumter-Lee Regional Detention Center to conduct another interrogation in March or April of 2025, after the North Carolina Center on Actual Innocence had begun making inquiries on Mr. Pearson's behalf. Weldon says he was asked all of the same questions regarding the robbery and the identity of those

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<sup>1</sup> Investigator Clark, now Captain Clark, had been the lead investigator into the 2010 robbery of Mr. Gibbons.

involved, which excluded Mr. Pearson. Importantly, Weldon further states that during that particular interrogation, investigator Clark told him that Leonard Smith had been questioned, admitted to his guilt and participation in the robbery, and confirmed that Mr. Pearson was not involved.

Mr. Pearson also had interactions with investigator Clark and an investigator from the Solicitor's office. In July 2023, he was taken to the Clarendon County Courthouse to meet with the Third Circuit Solicitor's investigator. Mr. Pearson states that the investigator told him that Weldon's case had been overturned, Weldon had pled guilty to lesser charges, and that Weldon said Pearson had nothing to do with it. That information served as the grounds for Mr. Pearson's 2024 *pro se* PCR Application.

During the meeting with the Solicitor's investigator, Mr. Pearson was asked if he knew Weldon, Mellette, or Smith, and said no. The Solicitor's investigator also informed Mr. Pearson that it was up to him (the investigator) to decide if Pearson was innocent. Investigator Clark from the Clarendon County Sheriff's Department (CCSD) was also present during that meeting. In a subsequent meeting with an investigator, Mr. Pearson was asked whether he was willing to undergo a polygraph test, and he consented.

In November 2023, Mr. Pearson was taken to SLED headquarters in Columbia, where he successfully passed a polygraph examination about the robbery. Upon passing the polygraph, Mr. Pearson states he was told by the Solicitor's investigator and investigator Clark that they knew he was innocent of the Gibbons robbery, and they were going to "get him out." The statements of the investigators about knowing that Mr. Pearson is innocent and about "getting him out" were witnessed by two Evans Correctional Institution officers who were at SLED headquarters with Mr. Pearson.

On June 18, 2025, Solicitor Finney acknowledged to the undersigned that Mr. Pearson was innocent and agreed to cooperate in proceedings to effect a court resolution and findings in that regard. On June 20, 2025, the undersigned submitted a proposed motion and order to Solicitor Finney. Surprisingly, on June 26, 2025, Solicitor Finney informed the undersigned that his cooperation in delivering justice to Mr. Pearson was conditioned on: 1.) Mr. Pearson not returning to Clarendon County<sup>2</sup>; and, 2.) Mr. Pearson waiving any civil action for a wrongful conviction.

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<sup>2</sup> This condition was apparently triggered by the victim's family's request.

On information and belief, neither condition is supported in law, and both raise serious ethical considerations that have been ongoing since November 2023.<sup>3</sup>

## **DISCUSSION & ARGUMENT.**

### **Timeliness of Application:**

Mr. Pearson's *pro se* PCR Application is dated June 3, 2024, and was filed for record on June 7, 2024. Mr. Pearson was not privy to, nor had he any way of knowing about, the negotiations between the Solicitor and Victor Weldon until July of 2023, after Weldon had entered his June 2023 negotiated plea.

It was not until November 2023, following his passing of a polygraph examination, that Mr. Pearson was told by the Solicitor's investigator and by law enforcement that they recognized his innocence. Even then, the details of Weldon's statements as contained in his June 10, 2025, Affidavit and those of Leonard Smith were only discovered nearly a year after Mr. Pearson filed his *pro se* PCR Application. Through no amount of due diligence could Mr. Pearson have possibly learned of any of these facts before his July 2023, meeting with the Solicitor's investigator and investigator Clark. The newly discovered evidence submitted therefore clearly meets the one-year statute of limitations codified in S.C. Code Ann. § 17-27-45(C).

### **The Five-Prong Test:**

A defendant 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 held; 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); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

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<sup>3</sup> When a prosecutor learns of credible, material evidence or information such that there is a reasonable probability a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) make reasonable efforts to promptly disclose in writing that evidence or information to the defendant or, if the defendant is represented by counsel, to the defendant's counsel, unless a court authorizes delay; and
- (2) promptly disclose in writing that evidence or information to the chief prosecutor in the jurisdiction where the conviction was obtained.

When a prosecutor knows of clear and convincing evidence or information establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall make reasonable efforts to seek to remedy the conviction. Rule 3.8(g) & (h), RPC, Rule 407, SCACR.

1. The newly discovered evidence would change the result if a new trial were granted.

Victor Weldon's confession that he, Kevin Mellette, and Leonard Smith were the ones who committed the robbery and that Mr. Pearson was not involved completely and thoroughly undermines the State's very thin circumstantial evidence presented at the 2012 trial of Weldon and Mr. Pearson. Smith's subsequent confession also buttresses Weldon's admissions. On the strength of that newly discovered evidence, there can be little doubt that there would be a different outcome were Mr. Pearson granted a new trial. In addition, given that the Solicitor accepted Weldon's confession as true by giving him the benefit of his 2023 proffer and plea agreement, it is hard to conceive how an ethical prosecutor could yet again prosecute Mr. Pearson, given the special role of prosecutors in our judicial system. In fact, given all of the foregoing, counsel is at a loss as to why the Solicitor has not already taken steps to remedy Mr. Pearson's wrongful conviction.

2. The newly discovered evidence was discovered since the trial.

Mr. Pearson's trial occurred in 2012. The confessions of Weldon and Smith, which exculpated Mr. Pearson, were not made until 2023, more than a decade later.

3. The newly discovered evidence could not have been discovered before the trial.

Following his arrest, Weldon told investigators he knew nothing about the robbery and maintained his innocence both throughout and even after the trial until his 2023 confession. On information and belief, neither Mellette nor Smith was ever considered a suspect before Weldon's confession. It would simply have been impossible for Mr. Pearson to have learned about their respective guilt before the trial.

4. The newly discovered evidence is material to the issue of guilt or innocence.

The newly discovered evidence is material as it completely exculpates Mr. Pearson of any knowledge of or participation in the crime for which he was wrongly convicted.

5. The newly discovered evidence is not merely cumulative or impeaching.

The newly discovered evidence is not merely cumulative or impeaching, as it thoroughly undermines the State's case as presented at trial and completely exonerates Mr. Pearson.

**CONCLUSION.**

The newly discovered evidence presented by way of this Amended Application surpasses all tests and requirements for granting Mr. Pearson a new trial. It establishes a *prima facie* showing that Mr. Pearson is entitled to the relief sought, and in so doing, also establishes his right to an

evidentiary hearing. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).


That Mr. Pearson was convicted in the first place was a travesty. That he yet remains imprisoned, serving a sixty-year sentence more than two years after the State obtained and accepted as true information confirming Mr. Pearson's actual innocence, constitutes a denial of fundamental fairness, shocking to the universal sense of justice. The wrongs that have been done to him deserve immediate and unconditional redress.

**PRAYER FOR RELIEF.**

WHEREFORE, Mr. Michael Pearson, by and through undersigned counsel, hereby requests and prays that this Honorable Court accepts this Amended Application for Post-Conviction Relief as having been timely made and filed, and further issues its Orders:

1. Requiring the preservation of all evidence in, related to, or regarding this case;
2. Permitting Mr. Pearson to engage in reasonable discovery as provided for under South Carolina law and the Rules of Civil Procedure;
3. Allowing Mr. Pearson to amend and supplement this Amended Application as may become necessary;
4. Granting an expedited hearing for an incarcerated innocent man; or,
5. Vacate Mr. Pearson's convictions and sentences, and dismiss the indictment and charges thereunder with prejudice.

Respectfully Submitted BY:

  
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At Gaffney, South Carolina

This 28<sup>th</sup> Day of June, 2025.



SHARON L. HARRIS  
CLERK OF COURT  
STATE OF SOUTH CAROLINA  
CLARENDON COUNTY, SC  
IN THE COURT OF COMMON PLEAS  
COUNTY OF CLARENDON  
2025 JUL 15 AM 11:00  
THIRD JUDICIAL CIRCUIT

Docket No.: 2024-CP-14-0261

MICHAEL WILSON PEARSON, )  
Applicant, )  
v. )  
STATE OF SOUTH CAROLINA )


**CERTIFICATION OF SERVICE**

The undersigned employee of the North Carolina Center on Actual Innocence hereby certifies that (s)he did on June 28, 2025, personally deposit the foregoing Amended Post Conviction Relief Application into the United States mail at the United States Post Office located in Gaffney, South Carolina, with sufficient first-class postage affixed and addressed to the below addressee(s) at their respective addresses as also shown below.

Hon. Alan Wilson  
SC Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

Hon. Ernest A. Finney, III  
Third Circuit Solicitor  
PO Box 836  
Sumter, SC 29151-0836

BY:

  
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At Gaffney, South Carolina

This 28th Day of June, 2025.