

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DARLINGTON)	2012-CP-16-814
)	
)	
Timothy Michael Farris,)	
)	
Applicant,)	APPLICANT'S MOTION FOR
)	
v.)	EXPEDITED HEARING ON
)	
State of South Carolina,)	MOTION FOR SUMMARY JUDGMENT
)	
Respondent.)	
_____)	

For the following reasons the Applicant respectfully requests the Court to add his petition for post-conviction relief to the current docket, to expedite the hearing, and to give it calendar priority.

1. This is an extraordinary case. It does not involve drugs. It does not involve violence. It does not involve a victim. Unlike most PCR petitioners, this Applicant has no criminal history. Nothing—until branded by false charges brought by a rogue police officer.

2. Moreover, “this is not a hard case in which to find a deficiency,” as the Supreme Court noted in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). The meritorious claims, detailed in Applicant’s Motion for Summary Judgment, show that defense counsel ignored evidence of violations of Applicant’s Fourth, Fifth, Sixth, and Fourteenth Amendment rights.

3. The Applicant was devastated to find he is not listed on the current docket. The irreparable harm from false charges, abandonment by defense counsel, and the consequences of being coerced into a guilty plea will be exacerbated by delay.

4. If the South Carolina courts are sincere in their dedication to justice, the court will act on this request expeditiously, by adding the Applicant to the current docket and

giving it calendar priority.

No Hardship for South Carolina

5. The Applicant is desperate for relief, as described in the enclosed Affidavit.

6. This should be a simple case for the court, as detailed in the Motion for Summary Judgment. In essence, South Carolina did not have jurisdiction, and there is no evidence a crime was committed.

7. If a court date is set within the next two months, there will be no hardship for the state. Although it is likely no one ever examined the file, everything is obvious with three exceptions, none that will take more than half an hour to verify. Using the exhibits in the Appendix for the Motion for Summary Judgment, the state will be able to confirm:

- No crime was committed because no age was stated by the detective who claimed he posed as a thirteen-years-old girl. To check this, use the computer search feature for the pages the detective claims are chat logs. [Exhibit N]
- No evidence exists that the Applicant's computer was used for the alleged internet chats. To check this, convert the Greenwich Mean Time (GMT) as stated on Yahoo logs [Exhibit M] to eastern standard time (EDST). Then compare the times with those on the detective's alleged chat logs [Exhibit N]. It will be clear the times do not match.
- No evidence links the chats to the Applicant's computer's IP. To check this, use the search feature on the computer to try to match the IPs on the Yahoo logs [Exhibit M] with the IPs registered with Yahoo as shown on the Applicant's profile [Exh. L].

The Disposition Clock

8. Expediting the Applicant's petition is warranted for additional reasons: The Applicant has been the victim of delay by the state since his arrest in 2008. And, as recently as 2012, the state failed to comply with the statutory requirement to file its answer to the PCR petition within sixty days.

- Without requesting an extension, the state's reply was filed two months late.
- It was mailed to an erroneous address, one never listed anywhere for the Applicant.
- Since it was not delivered, it should have been returned to sender. Yet the state never attempted to resend to the correct address.
- The docket evidences the certificate of mailing to the erroneous address.
(Also see, Applicant's Reply to the Motion to Dismiss.)

9. Back in 2008, the clock for disposition started August 1, 2008, the date of the illegal arrest of the twenty-years-old Applicant. Two weeks later he was indicted. No further action was taken for another fifteen months (the plea hearing at which the Applicant refused to plead guilty). This violated the 1999 mandate of Chief Justice Finney, which reads in part

Pursuant to Article V, § 4, of the South Carolina Constitution,

IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest.

Provided, however, that the circuit court may continue a criminal case beyond 180 days by written order if the court determines that exceptional circumstances exist in the case.

10. Ignoring this Order, the state did not request the court to determine whether exceptional circumstances existed for the fifteen months' delay.

11. More than two years after the illegal arrest, the Applicant again was ordered to appear at a plea hearing (March 9, 2011). Once again, the 1999 Order of Chief Justice Finney was violated. Once again, no request was made to the court to determine whether exceptional circumstances existed for the delay.

12. But for grossly ineffective representation by defense counsel, these failures would have entitled the Applicant to move for dismissal of all charges since “this length of time is presumptively prejudicial.” *State v. Langford*, Opinion No. 27195, (S.C., filed November 21, 2012). It did not happen.

13. Even when the state’s delay is due to a neutral reason, “including overcrowded dockets or negligence,” these “still count against the State because it bears the ultimate responsibility for these circumstances.” *Langford, id.*

14. The state cannot claim “complex case” as an excuse. It was a simple case. There was one witness—the detective who claimed he posed as a thirteen-years-old girl and was solicited for sex via the internet. Had there been a trial, whatever evidence might have been presented was available within the 180 days of Judge Finney’s order.

15. But the Applicant knew nothing about his rights. He did not know enough to request a preliminary hearing. He did not know enough to request a speedy trial. Not one of three sequential defense attorneys advised him of his rights.

16. In contrast, *State v. Kennedy*, Op. No. 3125 (S.C. App. 2000), was complex. Yet the court ruled,

The Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution provide that a criminal defendant is entitled to a speedy trial. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997).

. . . *The trial court found the length of delay, two years and two months, was troubling and sufficient to trigger inquiry into the other factors. The court found the State's claim of a heavy docket to be accurate but insufficient to excuse the delay.*

17. Delay prejudiced the Applicant's defense. If plea counsel had prepared for trial in 2011, three years after the arrest, the Applicant's alibi witnesses no longer could pin exactly the dates and times their band rehearsed for a church concert—dates and times that might have conflicted with the dates and times of computer use. Citing *Barker v. Wingo*, 407 U.S. 514 (1972) the *Langford* court said, "the inability of a defendant adequately to prepare his case skews the fairness of the entire system."

18. The Applicant was further prejudiced when he was abandoned by defense counsel and coerced into pleading guilty. The repercussions of this plea prejudiced the Applicant's daily life and continue to do so, as described in the attached affidavit.

19. The Applicant does not want dismissal on procedural grounds. The prejudice to his reputation and his future is so great that he needs exoneration based on the facts and the law. He needs exoneration that will restore the liberties denied by this wrongful conviction.

20. Denial of this request to expedite and give his petition calendar priority will result in continuing harm to the Applicant and his family.

The Court has the Power to Expedite

21. The judicial power to determine the order in which cases shall be heard is vested under Article 5, Section 1 of the constitution of this state. As the court in *Langford*, *Id.* noted,

In 1980, we recognized that "[t]he authority of the court [] to determine the

order in which cases shall be heard is derived from its power to hear and decide cases." Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). "This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." Id.

22. Following the South Carolina Supreme Court's decision on *Langford, Id.*, on November 21, 2012 the court issued an Order for disposition of cases in general session. Section (B)(2) emphatically grants the right to the Chief Judge for Administrative Purposes "to add cases to any trial roster or designate cases for a day certain as the CJAP deems appropriate, subject to the notification requirements . . ."

Conclusion

This Applicant has been the victim of injustice for five years. It behooves the court to provide the remedy as quickly and efficiently as possible. This is a simple case. The Motion for Summary Judgment should suffice, making a hearing unnecessary.

This court has the authority to add the Applicant to the current docket and give his petition for post-conviction relief calendar priority. Doing so will be the first step toward restoring rights the Applicant lost by the wrongful arrest and wrongful conviction.

The Applicant respectfully requests the court to rule on this within thirty days.

I swear under penalty of perjury that every statement in this pleading is true.

Dated: _____

Timothy Michael Farris, Applicant Pro Se
7910 Hillanby Court
Waxhaw, North Carolina 28173
(704) 256-9001

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COUNTY OF DARLINGTON)	
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)	2012-CP-16-814
Timothy Michael Farris,)	
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Applicant,)	
)	
v.)	[Proposed] ORDER
)	on Motion to Expedite
State of South Carolina,)	
)	
Respondent.)	
)	
_____)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The matter of Applicant, Timothy Michael Farris, to expedite the hearing on his Motion for Summary Judgment and post-conviction relief petition having been presented to this Court, and the Court having considered the pleadings and papers submitted in support and opposition therein, and finding good cause and justification hereby ORDERS the matter to be given calendar priority and decided without an evidentiary hearing on or before _____.

Dated: _____

Honorable J. Michael Baxley
Chief Administrative Judge
Fourth Circuit

Certificate of Service

A true and correct copy of the **Motion to Expedite** and two supporting affidavits were mailed to the Office of

Assistant Attorney General Tyson A. Johnson, Sr.

Post Office Box 11549

Columbia, SC 29211

This ____ day of _____, 2013.

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