Appendix A

FILED: September 13, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6647, Donniel Woods v. Aaron Joyner
9:17-cv-03336-TLW

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6647

DONNIEL WOODS,

Petitioner - Appellant,

v.

AARON JOYNER,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Terry L. Wooten, Senior District Judge. (9:17-cv-03336-TLW)

Submitted: August 30, 2019 Decided: September 13, 2019

Before GREGORY, Chief Judge, and KEENAN and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Donniel Woods, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donniel Woods seeks to appeal the district court's order accepting the recommendation of the magistrate judge, dismissing his 28 U.S.C. § 2254 (2012) petition and denying his motion to reconsider. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Woods has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Appendix B

FILED: November 5, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6647
(9:17-cv-03336-TLW)

DONNIEL WOODS

Petitioner - Appellant

v.

AARON JOYNER

Respondent - Appellee

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Gregory, Judge Keenan, and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

DONNIEL WOODS, a/k/a DONNEIL WOODS, a/k/a DONNELL WOODS, #272800, Petitioner,	CIVIL ACTION NO. 9:17-3336-TLW-BM
v.	**REPORT AND RECOMMENDATION**
AARON JOYNER, WARDEN OF LEE CORRECTIONAL INSTITUTION, Respondent.	

Petitioner, an inmate with the South Carolina Department of Corrections (SCDC), seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The pro se petition was filed by Petitioner on December 7, 2017.[1]

The Respondent filed a return and motion for summary judgment on April 6, 2018. As the Petitioner is proceeding pro se, a Roseboro order was entered on April 9, 2018, advising the Petitioner that he had thirty-four (34) days to file any material in opposition to the motion for summary judgment. Petitioner was specifically advised that if he failed to respond adequately, the motion for summary judgment may be granted, thereby ending his case. Petitioner thereafter filed a memorandum in opposition on May 9, 2018, and Respondent filed a reply on May 16, 2018.

[1]Filing date pursuant to Houston v. Lack, 487 U.S. 266 (1988).

This matter is now before the Court for disposition.[2]

Background

Petitioner was indicted in Clarendon County in August 2008 for criminal sexual conduct (CSC) in the first degree, kidnapping, and strong arm robbery [Indictment No. 2008-GS-14-365]. (R.pp. 509-510). Petitioner was represented by Deborah K. Butcher. After a trial by jury on October 14-16, 2008, Petitioner was convicted on all charges and sentenced to thirty (30) years for CSC, thirty (30) years for kidnapping, and fifteen (15) years for strong arm robbery, all to be served concurrent. (R.pp. 1-265, 511-513).

Petitioner filed a timely appeal on which he was represented by Robert M. Pachak, Assistant Appellate Defender. Counsel filed an Anders[3] brief requesting to be relieved as counsel and raising the following issue:

> Whether the trial court erred in refusing to allow defense counsel to impeach the victim with a prior bad act?

(R.p. 270).

Petitioner filed a pro se response to the Anders brief dated October 19, 2009, raising the following issues:

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[2]This case was automatically referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(c)and (e), D.S.C. The Respondent has filed a motion for summary judgment. As this is a dispositive motion, this Report and Recommendation is entered for review by the Court.

[3]Anders v. California, 386 U.S. 738 (1967). Anders requires that appointed counsel who seeks to withdraw because no nonfrivolous issues exist for review must submit a brief referencing anything in the record that arguably could support an appeal; a copy of that brief must be furnished to the defendant; and after providing the defendant with an opportunity to respond, the reviewing court must conduct an independent and complete examination of the proceedings to determine if further review is merited. See Anders, 386 U.S. at 744. See also Johnson v. State, 364 S.E.2d 201 (S.C. 1988).

Appellant, a Pro Se litigant[,] will show forth that Counsel (Robert M. Pachak) is clearly ineffective and has not handle[d] the Appellant's case with the diligence to which an indigent Appellant is entitled, pursuant to Supreme Court Rule 32 Code of Professionalism.

1. Appellant understands the Respondent's position. He will attempt to clarify his position as to relieving Mr. Pachak as his counsel. This has more to do with Mr. Pachak's duty as the Appellant's Counsel than the filing of an Anders Brief. (See Southerland v. State 524 S.E. 2d 833, 836 (1999)

2. In Mr. Pachak's petition to be relieved as counsel, clearly he states that "he reviewed Appellant's Trial that was held on October 15, 2008". The Appellant's Trial was held on October 14, 15, and 16, 2008 and to add to the matter the arguable legal issue that Mr. Pachak briefs in the Anders Brief was on Record October 15, 2008. If Pachak had reviewed the Appellant's entire Trial Record is it possible he would have found additional issues?

3. There are several reasons the Respondent should understand why the Appellant must relieve Mr. Pachak as his counsel. (1) Counsel has refused to [retrieve] the Appellant's entire history of his case, Motion of Discovery, Brady, Medical Records[,] [etc.] (2) Counsel continues to deny Appellant the right to Motion the Court for a stay on his appeal, so that Appellant may present Newly Discovered Evidence to the lower court in hope of a New Trial being granted. (3) Counsel's refusal to inform the Innocence Project of information and evidence that clearly shows an injustice has occurred. (See Frazier v. State, 410 S.E.2d 572, see enclosed documents.

4. There are several suggestions in this matter that allude to the Appellant's counsel being incompetent as well as unethical. Respondent should understand that the lack that exists by reason of Appellant's current status, does not make him ignorant to Mr. Pachak's lack of due diligence, competence and professional honesty. Counselor Pachak's continuous actions would suggest why he did not review the Appellant's entire Trial Records to find any meritorious issues for Appeal. Appellant has requested of counselor Pachak, on several occasions to have his file retrieved, then forward to him, that request has yet to be met as [of this] day. See Matter of Haddock, 321 S.E.2d 601 Attorney & Client Key 106.

See Court Docket No. 13-5, pp. 2-3.

The South Carolina Court of Appeals thereafter granted counsel's request to be relieved and denied the petition in its entirety on October 31, 2011. See State v. Donniel Woods,

2011-UP-487 (S.C.Ct.App. Oct. 31, 2011). (R.p. 277). Petitioner did not seek rehearing or certiorari review from the Supreme Court of South Carolina, and the South Carolina Court of Appeals issued the remittitur on January 9, 2012. (R.p. 278).

On May 4, 2012, Petitioner filed an application for post-conviction relief ("APCR") in state circuit court. Woods v. State of South Carolina, No. 2012-CP-14-210. (R.pp. 279-286). Petitioner raised the following issues in his APCR:

> 10(a). [Petitioner] was denied effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the US Constitution and Article 1. Section 14 of the SC Constitution and South Carolina Law including SC Code Section 17-23-60 by counsel's failure to complete the most basic pre-trial discovery and investigation: failing to highlight or object to the State's failure to provide exculpatory evidence to the [Petitioner]: failing to adequately prepare [Petitioner's] case for trial: failing to cross-examine witnesses to elicit favorable facts and to highlight contradictory evidence: failing to call witnesses not called by the State to elicit favorable facts and circumstances in [Petitioner's] defense.
>
> 10(b). [Petitioner] was denied the due process of law as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the US Constitution and Article 1, Section 3 of the SC Constitution . . . and South Carolina Law including SC Code Section 17-23-60 by counsel's failure to complete the most basic pre-trial discovery and investigation: failing to highlight or object to State's failure to provide exculpatory evidence to the [Petitioner]: failing to adequately prepare [Petitioner's] case for trial: failing to cross-examine witnesses to elicit favorable facts and to highlight contradictory evidence: failing to call witnesses not called by the State to elicit favorable facts and circumstances in [Petitioner's] defense.
>
> 10(c). Petitioner was denied the due process of law as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the US Constitution and Article 1, Section 3 of the SC Constitution . . . and South Carolina Law including SC Code Section 17-23-60 by the State's failure to provide exculpatory evidence in response to Counsel's discovery request.
>
> 11(a). [Petitioner] was served with criminal warrants on June 29, 2007 charging him with Criminal Sexual Conduct 1st Degree, Strong Arm Robbery and Kidnapping for an alleged sexual assault that took place on June 23, 2006. On the night of the alleged assault, the victim was treated at the Clarendon Memorial Hospital and a rape protocol examination was performed. [Petitioner's] attorney sent a discovery motion

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> to the Assistant Solicitor handling the case on July 26, 2007. Discovery was not provided to [Petitioner's] attorney until September 16, 2008, and no medical records were provided in the disclosure. [Petitioner's] attorney did not obtain these medical records prior to [Petitioner's] trial, and only subpoenaed the Hospital records custodian to be present for trial. Additionally, [Petitioner's] attorney failed to adequately prepare the case for trial by failing to conduct any meaningful investigation or interviewing of the medical personnel or other witnesses involved in the case.
>
> The failure to elicit these [additional] facts was significant because only evidence implicating the [Petitioner] was the victim's identification. Significantly, these records contain facts and disclosures that contradict statements the alleged victim provided to law enforcement and medical personnel on the night of the incident. Specifically, no DNA evidence was recovered, nor was there any physical evidence or bruising present that corroborated the victim's statement or implicated the [Petitioner]. Further, [Petitioner's] attorney did not elicit any of . . . these facts through cross-examination from witnesses that were called to testify, nor call witnesses to elicit this testimony. [Petitioner] only became aware of the existence of this evidence after his trial was complete. [Petitioner's] counsel also failed to perform basic cross-examin[ation] of other State witnesses that would have discredited those witness['] testimony.
>
> 11(b). [Petitioner repeats the allegations in 11(a) above].
>
> 11(c). [Petitioner's] attorney filed a Motion seeking the disclosure of evidence pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, as well as any exculpatory or mitigating evidence pursuant to Brady v. Maryland, 373 US 83. 83 S.Ct. 1194 (1963) and its progeny. The State of South Carolina through Assistant Solicitor Amy Land, failed to produce any of the medical records from the alleged victim's treatment following the incident. These records, included contradictory statements and exculpatory evidence that contradicted information the victim provided to law enforcement and could have been presented in the [Petitioner's] defense.

(R.pp. 281-283).

Petitioner was represented in his APCR by Blair Jennings, Esquire, and Ray Chandler, Esquire, and an evidentiary hearing was held on Petitioner's application on September 30, 2013. (R.pp. 293-402).

By order filed on December 11, 2013, the PCR judge denied Petitioner's requested relief in its entirety. (R.pp. 493-500). On December 23, 2013, PCR counsel filed a "Motion to Alter

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or Amend 59(e), SCRP." (R.pp. 501-503). Petitioner then filed a pro se Amended Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP. In this pleading, Petitioner asserted that he is actually innocent of the crimes of which he was convicted. (R.pp. 504-505). On May 5, 2014, the PCR judge filed an "Order Denying Rule 59(e) Motion and Pro Se Rule 59(e) Motion." (R.pp. 506-508). In this Order the PCR judge found, in part, that "[Petitioner] did not argue actual innocence during his Post-Conviction Relief Hearing on September 30, 2013. [Petitioner] had the ability and opportunity to make this argument during the hearing, it is improper to present it to the Court for the first time in a Rule 59(e) motion, and thus his argument is without merit." (R.p. 507).

Petitioner filed an appeal of the PCR court's order. Petitioner was represented on appeal by Assistant Appellant Defender Susan B. Hackett, who raised the following issue:

> Did trial counsel provide ineffective assistance in derogation of Petitioner's rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and the state constitution by failing to cross-examine the prosecution's only eyewitness to the alleged offense with a prior inconsistent statement?

See Petition, p. 2. (Court Docket No. 13-9, p. 3).

On July 24, 2017, the South Carolina Supreme Court denied the petition. See Court Docket No. 13-11. The Remittitur was sent down on August 9, 2017. See Court Docket No. 13-2.

In his Petition for writ of habeas corpus filed in this United States District Court, Petitioner raises the following grounds:

> **Ground One:** Actual Innocence - App. 449 Brady vs. Maryland.
>
> **Supporting Facts**: The Record will establish [Petitioner's] Innocence, Medical Records, SLED Forensic Findings that were not produced at the [Petitioner's] Trial in fact they were not produced until three years later. (SEE ATTACHMENTS).
>
> **Ground Two:** Denial of Review on Actual Innocence Claim. App. 504-508.

Supporting Facts: [Petitioner] filed for Actual Innocence in a Motion to Amend Judgment Pro-Se 59(e) after PCR Counsel refused to present argument in court. [Petitioner's] understanding is that Actual Innocence can be raised at any proceeding bearing the validity of the Evidence.

Ground Three: Ineffective Assistance of Post-Conviction Relief Paid Counsel.[4]

Supporting Facts: P.C.R. Counsel Ray Chandler was ineffective by releasing Prosecuting Attorney Amy Land when she was clearly Subpoena to testify as to the withholding of the Medical records in [Petitioner's] case. After filing an application that clearly states Brady vs. Maryland Issue why release the witness without testimony. App. 365 (SEE ATTACHMENT).

See Petition, pp. 6,8-9.

Discussion

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56, Fed.R.Civ.P; see Habeas Corpus Rules 5-7, 11. Further, while the federal court is charged with liberally construing pleadings filed by a pro se litigant to allow the development of a potentially meritorious case; See Cruz v. Beto, 405 U.S. 319 (1972), and Haines v. Kerner, 404 U.S. 519 (1972); the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Social Services, 901 F.2d 387 (4th Cir. 1990).

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[4]In Petitioner's response in opposition to summary judgment, he clarified that he did not intend to pursue Ground Three as an ineffective assistance of counsel claim. Rather, he intended his PCR counsel's ineffectiveness to be cause for his defaulted Brady v. Maryland claim in Ground One. See Petitioner's Memorandum in Opposition to Summary Judgment, p. 4. Accordingly, Ground Three is not addressed herein as a separate ground for relief in this petition.

Here, Respondent initially argues in his motion that Grounds One and Two of the Petition (both relating to a claim of actual innocence) are procedurally barred from consideration by this Court because Petitioner did not properly pursue and exhaust these claims in state court. Even so, rather than requesting the Court to dismiss these claims on that basis, Respondent asserts that "this Court does not need to address whether Petitioner can overcome the procedural default because a free-standing claim of actual innocence - even one based upon newly-discovered evidence, as opposed to the evidence at issue here - does not warrant federal habeas relief in light of Herrea v. Collins, 506 U.S. 390, 400, 405-406 (1993) and House v. Bell, 547 U.S. 518, 555 (2006)[declining to resolve whether actual innocence was a substantive claim in a capital case and concluding as in Herrera, 'that whatever burden a hypothetical freestanding innocence claim would require', this petitioner has not satisfied it]." See Respondent's Memorandum in Support of his Motion for Summary Judgment, p. 17.

Petitioner's claims involve some allegedly missing medical records of the victim which Petitioner contends establish his innocence but which were not produced until after his trial. However, although Petitioner's trial counsel did not receive the victim's medical records until the morning of the trial, she testified that she did receive and review them at that time and would have requested a continuance if she had needed one, but she did not. (R.pp. 318-319). Trial counsel also testified that she did not seek to introduce the medical records because they "had things in [there] about redness and scratches and [the victim's] statement that she had made about the rape and how upset and everything she was." (R.p. 319). Trial counsel testified that the DNA evidence from the swabs of the victim indicated "no semen identified"; therefore, rather than seeking to introduce the victim's medical records, Petitioner's counsel argued in her closing argument that there was "no

evidence of DNA or sperm" that tied the Petitioner to any crime. (R.pp. 227, 324, 332-333). Accordingly, the evidence at issue (specifically the DNA evidence regarding the swabs from the victim and related evidence or lack thereof) is not new or newly discovered evidence and was available and was known by the Petitioner, at the latest, when he was pursuing his state PCR court remedies as evidenced by the testimony during his PCR proceedings. (R.pp. 227, 318-319, 324).

In addition, Petitioner has not shown that he is entitled to habeas relief on his freestanding claim of actual innocence. See Buckner v. Polk, 453 F.3d 195, 199 (4th Cir. 2006)["[C]laims of actual innocence are not grounds for federal habeas relief even in a capital case"](quoting Rouse v. Lee, 339 F.2d 238, 255 (4th Cir. 2003)(en banc)(citing Herrera, 506 U.S. at 405)[5]; United States v. MacDonald, 641 F.3d 596, 616 (4th Cir. 2011); Hunt v. McDade, No. 98-6808, 2000 WL 219755, at * 2 (4th Cir. 2000)(unpublished)["The *Herrera* Court's analytical assumptions recognizing the possibility of a persuasive freestanding claim of actual innocence may be limited to capital cases because those assumptions were made in the context of evaluating the constitutionality of petitioner's execution."](citing Herrera, 506 U.S. at 417, id. at 427 (O'Connor, J., concurring); id. at 429 (White, J., concurring in the judgment); Fielder v. Varner, 379 F.3d 113, 122 (3d Cir. 2004)[dismissing a substantive claim of innocence in a noncapital case as not presenting a federal question]; Lucas v. Johnson, 132 F.3d 1069, 1075 (5th Cir. 1998)["*Herrera* does not overrule previous holdings (nor draw them into doubt) that a claim of actual innocence based on newly discovered evidence fails to state a claim in federal habeas corpus"]; Muntaser v. Bradshaw, 429 Fed.Appx. 515, 521 (6th Cir. 2011)["[A]n actual innocence claim operates only to excuse a

[5]"Habeas petitioners may use an actual innocence claim to excuse the procedural default of a separate constitutional claim upon which they request habeas relief." Buckner, 453 F.3d at 199 (citations omitted).

procedural default so that a petitioner may bring an independent constitutional challenge . . . . Given that [petitioner] alleges only a free-standing claim to relief on grounds of actual innocence, his claim is not cognizable . . . and, accordingly, does not serve as a ground for habeas relief"]; Coogan v. McCaughtry, 958 F.2d 793, 803 (7th Cir. 1992)[a new perspective on pre-existing evidence is insufficient to make new evidence]; Coley v. Gonzales, 55 F.3d 1385, 1387 (9th Cir. 1995); Myers v. Knowlin, No. 09-1076, 2011 WL 1428898, at *24 (D.S.C. Mar. 24, 2011), Report and Recommendation adopted by, 2011 WL 1515142 (D.S.C. Apr. 14, 2011), aff'd, 442 Fed.Appx. 836 (4th Cir. Aug. 11, 2011), cert. denied, 565 U.S. 1127 (2012).

Furthermore, even assuming *arguendo* that Petitioner's claim is cognizable, his claim that the DNA/medical evidence exonerates him cannot survive *Herrera's* stringent evidentiary test.

> *Herrera* requires "a truly persuasive demonstration of actual innocence," "id. At 417, and states that "the threshold showing for . . . an assumed right [to assert a freestanding actual innocence claim] would be extraordinarily high." Id. "To be entitled to relief, . . . petitioner would at the very least be required to show that based on proffered newly discovered evidence and the entire record before the jury that convicted him, 'no rational trier of fact could [find] proof of guilt beyond a reasonable doubt.'" Id. at 429. (White, J., concurring)(citing Jackson v. Virginia, 443 U.S. 307, 324 (1979)).

Hunt, 2000 WL 219755, at * 2.

In Hunt, the Court found that the DNA evidence results did nothing to discount a number of other possible scenarios reasonably implicating [petitioner] in the sexual assault: [petitioner's] sperm might have been present on a different, untested sample, [petitioner] raped [the victim] but did not ejaculate . . . " Id. at 3. Similarly, in this case, viewing the entirety of the evidence presented at trial, Petitioner has not shown that no rational jury would have convicted him. The victim testified at trial in detail about the kidnap, robbery, and sexual assault of her by the Petitioner. Moreover, with

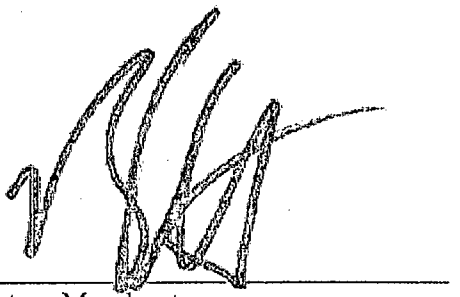
regard to Petitioner's argument that no semen was found on the swab from the victim, the victim's trial testimony was that the Petitioner ejaculated on her arm and stomach after the first sexual intercourse encounter, that he ejaculated on her stomach after the second sexual intercourse encounter, and also forced her to perform oral sex. (R.pp. 32-36, 39. Hence, the lack of semen on the swab does not meet *Herrera's* stringent evidentiary test for establishing actual innocence. Therefore, even assuming arguendo that this issue could be considered on habeas review, it is without merit.

Finally, to the extent that Petitioner is alleging infirmities in his PCR court proceedings in Ground Two, any such alleged infirmities in PCR proceedings do not state a basis for federal habeas relief. See Bryant v. Maryland, 848 F.2d 492, 493 (4th Cir. 1988) [finding claims of error occurring in a state post-conviction proceeding cannot serve as a basis for federal habeas relief]; Nichols v. Scott, 69 F.3d 1255, 1275 (5th Cir. 1995) ["An attack on a state habeas proceeding does not entitle the petitioner to habeas relief . . . ."], cert. denied, 518 U.S. 1022 (1996); Spradley v. Dugger, 825 F.2d 1566, 1568 (11th Cir. 1987) (per curiam) ["Because claim (1) goes to issues unrelated to the cause of [the] petitioner's detention, it does not state a basis for habeas relief."]; Hassine v. Zimmerman, 160 F.3d 941, 954 (3d Cir. 1998) [stating errors in state post-conviction proceedings are collateral to the conviction and sentence and do not give rise to a claim for federal habeas relief]. Therefore, this issue is also without merit.

Conclusion

Based on the foregoing, it is recommended that the Respondent's motion for summary judgment be **granted**, and that the Petition be **dismissed**.

See also the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

June 13, 2018
Charleston, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Appendix D

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

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Case Name: Woods v. Joyner
Case Number: 9:17-cv-03336-TLW
Filer:
WARNING: CASE CLOSED on 03/05/2019
Document Number: 26

Docket Text:
SUMMARY JUDGMENT in favor of Aaron Joyner against Donniel Woods. (egra,)

9:17-cv-03336-TLW Notice has been electronically mailed to:

William Edgar Salter, III ESalter@scag.gov

Melody Jane Brown mbrown@scag.gov, abennett@scag.gov

9:17-cv-03336-TLW Notice will not be electronically mailed to:

Donniel Woods
272800
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

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Document description: Main Document
Original filename:n/a
Electronic document Stamp:
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Donniel Woods, Petitioner, v. Aaron Joyner, Respondent.	C/A No.: 9:17-cv-3336-TLW **ORDER**

Petitioner Donniel Woods, proceeding *pro se*, filed this petition pursuant to 28 U.S.C. § 2254. ECF No. 1. On April 6, 2018, Respondent filed a motion for summary judgment, ECF No. 14, which Petitioner opposed, ECF No. 17. This matter now comes before the Court for review of the Report and Recommendation (the Report) filed on June 13, 2018, by United States Magistrate Judge Bristow Marchant, to whom this case was previously assigned pursuant to 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(c), (D.S.C.). ECF No. 20. In the Report, the Magistrate Judge recommends granting the Respondent's motion for summary judgment and dismissing the petition. *Id.* Petitioner filed objections to the Report on June 27, 2018, ECF No. 22, to which Respondent responded, ECF No. 23. This matter is now ripe for disposition.

The Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the

recommendations contained in that report. 28 U.S.C. § 636. In conducting its review, the Court applies the following standard:

> The magistrate judge makes only a recommendation to the Court, to which any party may file written objections . . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report, the applicable law, the record, and the objections. As stated in Petitioner's response to summary judgment and his objections, Petitioner argues that there are newly-discovered SLED DNA documents and medical records that prove his actual innocence. He also argues that they should have been presented at trial. However, the record reflects that these documents were available at trial and that trial counsel mentioned "helpful" information gleaned from the documents during closing statements. *See* ECF No. 13-1 at 229-230. Further, the documents were introduced in state PCR. ECF No. 13 at 17. The Court accepts the Magistrate Judge's careful factual and legal analysis, which concludes that Petitioner cannot raise a standalone claim for actual innocence or for ineffective assistance of PCR counsel, and that the

evidence he deems "newly discovered," is not new because it was available at trial and at state PCR. ECF No. 20. In his objections, Petitioner does not state a legitimate factual or legal basis for not accepting the Report. ECF No. 22. Therefore, after careful consideration, **IT IS ORDERED** that the Report, ECF No. 20, is **ACCEPTED**, and the Petitioner's Objections, ECF No. 22, are **OVERRULED**. Respondent's motion for summary judgment, ECF No. 14, is **GRANTED** and the Petition, ECF No. 1, is hereby **DISMISSED**.

The Court has reviewed this Petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised herein. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/Terry L. Wooten
Senior United States District Judge

March 5, 2019
Columbia, South Carolina

Appendix J

MIME-Version:1.0
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Bcc:
--Case Participants: Melody Jane Brown (abennett@scag.gov, mbrown@scag.gov), William Edgar Salter, III (esalter@scag.gov), Honorable Terry L Wooten (wooten_ecf@scd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:<9018938@scd.uscourts.gov>
Subject:Activity in Case 9:17-cv-03336-TLW Woods v. Joyner Order on Motion for Hearing
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U.S. District Court

District of South Carolina

Notice of Electronic Filing

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Case Name: Woods v. Joyner
Case Number: 9:17-cv-03336-TLW
Filer:
WARNING: CASE CLOSED on 03/05/2019
Document Number: 36

Docket Text:
ORDER denying [28] Motion for Hearing; denying [29] Motion for Reconsideration ; denying [30] Motion to Compel. Signed by Honorable Terry L Wooten on 04/24/2019. (egra,)

9:17-cv-03336-TLW Notice has been electronically mailed to:

William Edgar Salter, III ESalter@scag.gov

Melody Jane Brown mbrown@scag.gov, abennett@scag.gov

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Document description: Main Document
Original filename:n/a
Electronic document Stamp:
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Donniel Woods, a/k/a Donneil Woods, a/k/a Donnell Woods, #27800, Petitioner, vs. Aaron Joyner, Warden of Lee Correctional Inst., Respondent.	Case No. 9:17-cv-03336-TLW **ORDER**

This matter comes before the Court on Petitioner Donniel Woods's "Motion for Reconsideration to Alter or Amend Judgment," ECF No. 29, which seeks reconsideration of the Court's Order filed on March 5, 2019, ECF No. 25. In that order, the Court accepted the Report and Recommendation (the Report) of the Magistrate Judge in this case. ECF No. 20. Petitioner has also filed a "Motion for Leave for District Court to Compel Amy Land to Make Initial Disclosure to Interrogatories," ECF No. 30, and "Motion for Leave to Conduct a Pre-Trial Hearing," ECF No. 28. Respondent filed a response in opposition to the motion on April 12, 2019, ECF No. 31, and Petitioner filed a reply on April 22, 2019. ECF No. 23.

The Court has carefully reviewed the relevant filings and applicable law, and concludes that Petitioner fails to show any intervening change in controlling law, account for new evidence, or show clear error of law or manifest injustice. Although Petitioner restates his arguments contained in his petition, motions, response to summary judgment, and objections, he does not present sufficient evidence of manifest injustice, extraordinary circumstances, or new evidence. *See* Fed. R. Civ. P. 60(b). The Report filed by the Magistrate Judge carefully and properly analyzed the issues raised by the petitioner. The Court concludes that Petitioner has not set forth sufficient grounds or raised new evidence to cause the Court to alter, amend, or vacate its March 5, 2019

Order. *See id*; Fed. R. Civ. P. 59(e). For the reasons stated, the Court finds Petitioner's motion for reconsideration, ECF No. 29, is hereby **DENIED**. Additionally, Petitioner's motion for a hearing, ECF No. 28, and motion to compel discovery, ECF No. 30, are **DENIED**.

IT IS SO ORDERED.

s/Terry L. Wooten
Terry L. Wooten
Senior United States District Judge

April 24, 2019
Columbia, South Carolina

Additional material from this filing is available in the Clerk's Office.