

STATE OF NEW YORK
COURT OF CLAIMS

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DONNELL PERKINS, :

Claimant, :

VERIFIED CLAIM

- against - :

Claim No. _____

THE STATE OF NEW YORK, :

Defendant. :

-----X

To the Clerk of the Court of Claims:

Claimant, DONNELL PERKINS, is a citizen of the United States. His post office address is c/o Law Offices of Joel B. Rudin, P.C., 152 West 57th Street, 8th Floor, New York, New York 10019. Claimant, by his attorney, Law Offices of Joel B. Rudin, P.C., alleges as follows:

PRELIMINARY STATEMENT

1. Claimant Donnell Perkins spent more than 20 years in state prison for a crime he did not commit.

2. When Reuben Scrubb was shot and killed early on Christmas Day 1999, Perkins, then a 17-year-old with no criminal record, was miles away in his father’s apartment. Police focused on him as a suspect even though he didn’t fit the description given by the sole eyewitness to the shooting, and the witness, when shown a photo array containing Perkins’s photo, didn’t recognize or identify Perkins. Following a pretrial evidentiary hearing, the judge worried that “the testimony that I have heard suggests to me that Mr. Perkins may very well not be the right person,” but she nevertheless allowed the case to reach a jury. Perkins was convicted. He served almost 22 years in total before being paroled, despite continuing to claim his innocence.

3. In January 2023, a Brooklyn judge vacated Perkins's conviction based upon newly discovered evidence of innocence under CPL § 440.10(1)(g). The evidence was that the sole eyewitness to the shooting had serious vision impairments, which he had falsely denied at trial. The court found that, had such evidence been known to the defense, Perkins probably would have been acquitted. Six months later, on the District Attorney's motion, the court dismissed the indictment.

4. Donnell Perkins can establish by clear and convincing evidence that he did not commit any of the acts charged in the indictment and that he did not by his own actions cause his own conviction. He is entitled to recover damages for his unimaginable injuries: spending the prime of his life—ages 19 through 39—in prison for a crime he did not commit.

PROCEDURAL BACKGROUND

5. Reuben Scrubb was shot to death in Brooklyn, New York, on December 25, 1999, at approximately 4:00 a.m.

6. On January 6, 2000, Perkins was arrested for, and the next day he was charged with, aiding and abetting Scrubb's murder.

7. On or about January 14, 2000, a grand jury indicted Perkins on four counts: (1) murder in the second degree, on a theory of depraved indifference to human life, PL § 125.25(2); (2) murder in the second degree, on a theory of intentional homicide, PL § 125.25(1); (3) criminal possession of a weapon in the second degree, PL § 265.03(2); and (4) criminal possession of a weapon in the third degree, PL § 265.02(4). *See* Exhibit 1, Indictment No. 249/2000.

8. On January 28, 2000, Perkins's much older cousin, Kareem Mayo, was arrested as the alleged shooter. On or about February 2, 2000, a grand jury indicted Mayo on the same four counts as Perkins.

9. The Perkins and Mayo indictments were subsequently consolidated into a single indictment, No. 249/2000.

10. On March 13, 2001, after a pretrial hearing, a judge stated on the record, "the testimony that I have heard suggests to me that Mr. Perkins may very well not be the right person." Nevertheless, she allowed the case to be decided by a jury.

11. On April 25, 2001, after a trial in Supreme Court, Kings County, a jury convicted Perkins and Mayo of the second indictment count, murder in the second degree on a theory of intentional homicide, PL § 125.25(1). Exhibit 2, Transcript of Guilty Verdict. The other three counts had been dismissed during the trial.

12. The sole evidence against Perkins and Mayo at trial was the eyewitness testimony of a man named Ernest Brown.

13. On May 16, 2001, at his sentencing proceeding, Perkins protested his innocence, saying, "I don't hang out with Kareem Mayo. . . . Don't have no record. Never been in no kind of trouble with anybody. No kind of crime. Never did no crime before. That's it. I just want to give my condolences to the mother. I didn't do the crime."

14. The court sentenced Perkins to 22 years to life in state prison. Exhibit 3, Sentence & Commitment Order.

15. On July 31, 2002, Perkins filed a CPL § 440.10 motion, requesting a new trial on the ground that his trial lawyer had been ineffective. On September 27, 2002, the trial court denied the motion without a hearing. The Appellate Division denied leave to appeal.

16. On August 18, 2003, the Appellate Division denied Perkins's direct appeal, affirming his conviction and sentence. *People v. Perkins*, 307 A.D.2d 1001 (2d Dep't 2003). The Court of Appeals denied leave to appeal on October 9, 2003. *People v. Perkins*, 100 N.Y.2d 644 (2003).

17. On June 4, 2004, Perkins filed a federal habeas corpus petition in the United States District Court for the Eastern District of New York. On December 30, 2005, the district court denied the petition. *Perkins v. Comm'r of Corr. Servs.*, No. 04-CV-2307(ERK), 2005 WL 3591722 (E.D.N.Y. Dec. 30, 2005).

18. However, Chief Judge Edward R. Korman harbored such serious doubts about Perkins's guilt that he took the exceptional step of lamenting, given the extremely heavy burden governing federal habeas review, that he could not grant relief: "[T]he description initially provided by the eyewitness was materially different from petitioner's physical appearance. . . . Barring some change in the standard [governing habeas corpus claims], I regret that I am unable to issue the writ." *Id.* at *2-3.

19. On February 23, 2007, the Second Circuit affirmed the denial of the habeas petition. *Perkins v. Comm'r of Corr. Servs.*, 218 F. App'x 24 (2d Cir. 2007).

20. On September 17, 2020, Perkins and codefendant Mayo filed a joint motion to vacate their convictions under, *inter alia*, CPL § 440.10(1)(g), based on newly discovered evidence that the sole eyewitness, Ernest Brown, who wasn't wearing eyeglasses when the shooting occurred, had significantly impaired eyesight at the time and had testified falsely about his eyesight at trial.

21. While the motion was pending, Perkins appeared before the Board of Parole for the first time and maintained his innocence. Evidently troubled by the thinness of the evidence,

in March 2021, the Board granted him parole. He was released from prison to parole on July 1, 2021. Exhibit 4, DOCCS Chronological History Display; Exhibit 5, Division of Parole Record.

22. On January 23, 2023, the trial court granted Perkins and Mayo's 440 motion on the ground of newly discovered evidence and ordered a new trial. Exhibit 6, Decision & Order, at 9, 11. The court reasoned that the newly discovered evidence about Brown's eyesight impairment created a reasonable probability that, had such evidence been received at trial, Perkins and Mayo would have been acquitted.

23. On June 16, 2023, the court, with the consent of the District Attorney, ordered the indictment dismissed. Exhibit 7, Transcript of Dismissal; Exhibit 8, Certificate of Disposition.

EVIDENCE OF DONNELL PERKINS'S INNOCENCE

24. Donnell Perkins can establish by clear and convincing evidence that he did not commit any of the acts alleged in the indictment and that he did not by his own actions cause his conviction. The evidence of Perkins's innocence includes the following.

Perkins's alibi and good character

25. Perkins will credibly testify that he was in his bedroom in his father's apartment when Reuben Scrubb was shot.

26. Perkins's father will credibly testify that he also was in the apartment the entire evening and early morning when the shooting and the events surrounding it occurred and that his son, Perkins, was in the apartment at that time.

27. At the time of his arrest, Perkins had never been convicted of a crime.

28. Perkins maintained his innocence at his sentencing proceeding even though it was likely to subject him to a higher sentence, and at his parole hearing even though it was likely to cause the Board of Parole to deny his parole application.

29. Despite entering prison at age 18 and spending more than 20 years there, Perkins had an almost perfect record and was never charged with violence or any other criminal act.

Exculpatory eyewitness descriptions and identification procedure

30. Based upon an interview of Ernest Brown, police began with a description of a gray Infiniti Q45 as having been used by the shooter and his accomplice. They performed a search and found more than 200 cars in Brooklyn that fit this description. Rather than investigate these vehicles and their owners, however, police took the shortcut of focusing on Kareem Mayo as the alleged shooter because he already was under suspicion in a nearby precinct for an unrelated shooting and so was an easy target. Their excuse for focusing on Mayo was that his family member owned an Infiniti Q45, even though that car was a different color than the one Brown had described the perpetrators as using.

31. Just as arbitrarily, police focused on Donnell Perkins as a suspect because he was a relative (a cousin) of Kareem Mayo's, even though, as Perkins and his family members will testify, he was eight years younger than Mayo and they never hung out together.

32. Worse, Perkins didn't at all fit the description of the accomplice in the shooting given by the sole eyewitness, Ernest Brown.

33. While other family members of Kareem Mayo fit the description of the accomplice much more closely than Donnell Perkins did, police went after Perkins because, when they stopped his car, he refused to help them locate Mayo.

34. Ernest Brown said the accomplice, whom the prosecution alleged was Perkins, was between 6'1" and 6'3", but Perkins was under 5'10". Brown had a good opportunity to judge the accomplice's height, having observed him repeatedly on a sidewalk and nearby street, standing at the same level as Brown so that Brown could judge this man against his own height.

Brown was 5'10". In other words, Perkins, like Brown, was average height, whereas the perpetrator described by Brown was well above average height.

35. Brown was sure the perpetrator wore eyeglasses, but as Perkins will establish—through documentary evidence, his own testimony, and the testimony of family, friends, and acquaintances—he had perfect vision and never in his life wore eyeglasses.

36. Brown described the perpetrator as being clean-shaven, but Perkins will establish—through police photographs, his own testimony, and the testimony of family, friends, and acquaintances—that during the period when the shooting occurred, he wore a mustache and a beard.

37. Brown described the perpetrator as having dark skin, but Perkins had at most a medium complexion.

38. Brown described the perpetrator as being 18-23 years old, while Perkins was only 17 years old and appeared no older than that.

39. On January 6, 2000, Police showed Ernest Brown a photo array containing Perkins's photo, but according to Brown's own testimony, he did not recognize or identify Perkins as one of the perpetrators.

40. Perkins will establish through the testimony of an eyewitness-identification expert that this circumstance, as well as the inconsistencies between Brown's description and Perkins's actual appearance, are diagnostic of innocence.

41. Brown told police that the accomplice came out of a bar immediately before bumping into Brown's friend Scrubb, the eventual shooting victim. However, the bar's owner and employees told police that the bar catered to an older clientele and did not admit minors. Perkins, then just 17, would have been neither allowed in that bar nor himself inclined to

patronize it. Indeed, Perkins will establish—through his own testimony and that of family, friends, and acquaintances—that during this period, he never drank alcohol or went to bars or nightclubs.

CAUSE FOR RELIEF

42. Perkins repeats and incorporates the preceding paragraphs as though fully set forth herein.

43. This is a claim for damages under Section 8-b of the Court of Claims Act. It has not been assigned and has not been submitted to any other officer or tribunal for audit or determination.

44. Prosecutors acting on behalf of the State of New York caused Perkins to be convicted at trial on April 25, 2001, of murder in the second degree. *See* Exhibits 2, 3.

45. Perkins was sentenced to 22 years to life in prison. *See* Exhibit 3.

46. Perkins was incarcerated for 20 years, 2 months, and 7 days after his unjust conviction in this case. He then was on parole for 1 year, 6 months, and 23 days before his conviction was vacated. *See* Exhibits 2-6.

47. As detailed above, a court explicitly held that “defendants’ newly-discovered evidence claims are granted,” Exhibit 6 at 9, and the indictment was then dismissed, *see* Exhibits 7, 8, which satisfies the requirements of Court of Claims Act §§ 8-b(3)(b) and 8-b(5)(b).

48. There is clear and convincing evidence that Perkins did not commit any of the acts charged in the accusatory instrument.

49. There is clear and convincing evidence that Perkins did not by his own conduct cause or bring about his own conviction.

50. This claim is timely, because the indictment against Perkins was dismissed on June 16, 2023, *see* Exhibits 7, 8, which is within two years of the filing of the present claim.

INJURIES AND DAMAGES

51. During the period Donnell Perkins was suffering under his unjust conviction, he was confined in state prison and on parole supervision.

52. While in prison, Perkins suffered, among other things, physical assault; severe mental anguish, including the fear of further assaults and the witnessing of brutal assaults against other prisoners; inadequate medical attention; the loss of virtually all privacy and autonomy; constant humiliation, indignities, embarrassment, and degradation; and severe restrictions on his personal liberty and freedom, including but not limited to diet, sleep, personal contact, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression.

53. Perkins's unjust imprisonment caused him loss of consortium with his parents, siblings, and other family members and friends. Multiple members of Perkins's family passed away while he was imprisoned, and on several of those occasions he was not allowed to attend their funerals to pay his respects, which traumatized him.

54. Perkins's unjust conviction for a crime he did not commit caused him mental and emotional suffering, and permanent mental and emotional harm that continues to this day, including, but not limited to, stress, anxiety, depression, sleep deprivation, nightmares, and fear of police.

55. Perkins's unjust conviction also caused him additional, ongoing injuries after his release from prison, including the burdens of complying with onerous parole requirements for more than a year and a half before his conviction was vacated.

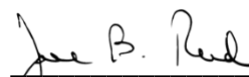
56. Perkins's unjust conviction caused him to lose substantial income and benefits and suffer permanent diminution of his earning potential. The precise amounts of these damages will be determined by an economist.

57. While Perkins's attorneys representing him in his 440 motion worked pro bono, he owes them for substantial expenses they incurred, in an amount to be determined.

58. By reason of the foregoing, Perkins is entitled under the Unjust Conviction and Imprisonment Act of 1984 to reasonable and fair damages, the particulars of which are set forth in the following schedule of damages:

Damages for the loss of liberty, physical injury and illness, and mental and emotional suffering caused by Perkins's unjust conviction and wrongful imprisonment	\$40,000,000
Damages for past and future wages and benefits Perkins would have earned but for his unjust conviction and wrongful imprisonment	To be determined
Damages for costs and expenses Perkins owes his attorneys	To be determined

WHEREFORE, Claimant Donnell Perkins hereby claims total damages from the State of New York in an amount exceeding \$40,000,000.



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Attorneys for Claimant Donnell Perkins

Dated: August 17, 2023
New York, New York

STATE OF NEW YORK
COURT OF CLAIMS

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DONNELL PERKINS,

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Claimant, :

VERIFICATION

- against -

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Defendant. :

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State of New York)

)

ss:

County of New York)

DONNELL PERKINS, being duly sworn, deposes and says as follows:

I am the Claimant herein. I have read the foregoing Claim for Damages against the State of New York and know its contents. The same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

Donnell Perkins
DONNELL PERKINS

Sworn to before me this 17th
day of August 2023

Theresa S. Peters
Notary Public

THERESA S. PETERS
Notary Public, State of New York
No. 03-4882379
Qualified in Bronx County
Commission Expires Jan. 5, 2027