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**Harris v. French, No. 98-34, 1999 WL 496941 (4th Cir. July 14, 1999) Wilson v. Moore, 178 F.3d 266 (4th Cir. 1999)**

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**Harris v. French, No. 98-34, 1999 WL 496941  
(4th Cir. July 14, 1999)<sup>1</sup>  
Wilson v. Moore, 178 F.3d 266 (4th Cir. 1999)**

*Harris v. French*<sup>2</sup> and *Wilson v. Moore*<sup>3</sup> are directive on the questions of when and how to introduce newly discovered evidence in support of a federal habeas petition. In *Harris*, a capital case, petitioner in an appeal for federal habeas relief contested the district court's decision not to consider affidavits filed in support of his ineffective assistance of counsel claim.<sup>4</sup> That same claim, not supported by affidavits, had been dismissed by the state court because it was not supported by the evidence.<sup>5</sup> In *Wilson*, a non-capital case, petitioner sought in state habeas to introduce for the first time evidence in support of an ineffectiveness claim.<sup>6</sup> The state court refused to consider both Wilson's claim and the evidence supporting it because neither had been presented to a lower state court.<sup>7</sup> Wilson then sought to introduce the evidence on federal habeas.<sup>8</sup>

In both cases, the Fourth Circuit held that the federal district court was prohibited from considering the evidence.<sup>9</sup> The effect is summarized in *Harris*: "we treat the unexcused omission of evidentiary materials in state court proceedings in the same manner that we treat unexcused omission of claims in the state court proceedings—we apply the doctrine of procedural

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1. This is an unpublished opinion which is referenced in the "Table of Decisions Without Reported Opinions" at 182 F.3d 907 (4th Cir. 1999).

2. No. 98-34, 1999 WL 496941 (4th Cir. July 14, 1999).

3. 178 F.3d 266 (4th Cir. 1999).

4. *Harris v. French*, No. 98-34, 1999 WL 496941, at \*5 (4th Cir. July 14, 1999).

5. *Id.*, at \*5.

6. *Wilson v. Moore*, 178 F.3d 266, 270 (4th Cir. 1999).

7. *Id.* at 271.

8. *Id.* at 270.

9. In *Harris*, the Fourth Circuit stated that procedural default restricts a federal court from reviewing habeas claims that were defaulted under an independent and adequate state procedural rule. *Harris*, 1999 WL 496941, at \*5. In *Wilson*, the court concluded that the district court, in its 28 U.S.C. §2254 determination, could not consider evidence that had been procedurally barred at the state level. *Wilson*, 178 F.3d at 272-73; see 28 U.S.C. § 2254 (1999).

default.”<sup>10</sup> It is therefore crucial that state habeas counsel present not only every available claim at the first opportunity, but must also find and present at the earliest opportunity all evidence supporting each claim made.

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10. *Harris*, 1999 WL 496941, at \*5.