

To: Jenny Abbott Kitchings  
P.O. Box 11629  
Columbia, S.C. 29211

Date: March 8<sup>th</sup>, 2023

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MAR 15 2023

SC Court of Appeals

From: Brandon J. McFadden / 313848 F.5 B.186  
Evans Correctional Institution  
610 Hwy. 9 West  
Marlboro, S.C. 29512

RE: Attachment to Appeal

Dear To Whom It May Concern

I'm requesting that this letter and the additional papers be filed and sent to the rightful place. The papers that's numbered between one through five are attachments to my on-going appeal dealing with my (Fed. Hab.) I'm requesting that the additional papers be filed along with my appeal and I'm requesting that this be done as soon as possible. I truly appreciate your time, aid, help, and assistance.

Sincerely, B. McFadden

evidence against  
defendant  
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- Grands raised • Counsel failed to do an adequate investigation upon evidence against
- Due process violation ineffective assistance of counsel
- Prosecutor Misconduct / breached plea agreement / due process violation
- Attorney failed to represent client to the fullest extent of the law
- Counsel failed to object plea offer knowing constitutional violations were made.
- Counsel wrongly advised defendant during plea offer knowing of constitutional violations
- Counsel deprived defendant of liberty of my constitutional rights of effective counsel.
- Error of Law & Manifest Injustice

Facts and truth to support the constitutional violations are found in the post conviction relief transcript / State of South Carolina in the Supreme Court / Certiorari to Sumter County Honorable R. Kirk Griffin, Circuit Court Judge / Brandon McFadden petitioner v. State of South Carolina Respondent / Appellate case No. 2021-000482

On November 12<sup>th</sup>, 2019 I, Brandon McFadden was sentenced to 20 years for arm-robbery. Days prior to the plea my attorney, Katarzyna Timmons and the Solicitor John P. Meadors came to an agreement that I would plea to 20 years for all charges and the were arm-robbery, possession of a weapon of a firearm by person convicted of violent felony, unlawful carry of pistol, possession during the commission of a violent crime. On the day of the plea hearing the attorney spoke with before entering the courtroom and presented an sentencing sheet that only had an arm-robbery charged and on sentenced for 20 yrs. my attorney said that the ~~prosecutor~~ solicitor did not inform her why he dropped the charges and didn't dropped the sentence. There was no signed paperwork agreeing for the other charges be dismissed. Upon dealing with the plea bargain the attorney knew that without the weapon charges it affect the nature of the crime. The attorney also went back to discuss the plea bargain the solicitor had refused to dropped the charge and time. The solicitor also stated that if I did not accept the plea he would take the offer away and I would be placed on the trial docket for the following month. The attorney told me that I should not say anything to the judge because may affect the plea. Therefore I was forced and coerced into an plea bargain that was not part of the original plea agreement.

Dealing with the plea bargain the counsel was ineffective and the solicitor entered into voluntarily. One process clause requires that guilty pleas are 337 S.C. / Additionally a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense / Dealing with the case at hand that take the crucial element every one affected the nature of the offense. In this case the charge offense is to be dropped to an lesser included offense. The plea was involuntary because I didn't want to plea because it was not part of the agreement and it was unhelpful about the details of the weapon charges being dropped and unintelligently and I knew that this was an violation of my constitutional right that affected the due process. Procedural due process imposes constraints on governmental decisions which deprived individual of liberty or property interest within the meaning of the due process clause of the fifth or fourteenth amend. of the U.S. Const. / U.S. Const. 5.14

On pg. 66 p.c. transcript the attorney was asked "Lord Mr. McFadden have been aware that the state was prepared to dismissed the other three charges?" (Ms. Timmons) "I'm not sure. But I remember that it was 20 years negotiated on arm robbery because the arm robbery was the most serious of those charges and that would include all the weapon charges."

The attorney was full aware of the elements and nature of the offense and was aware that the plea was breached the solicitor did not stick to the original agreement. The solicitor violated the due process clause and so did the attorney. The errors advise by attorney prejudice the defendant and affected the outcome of the plea bargain. Had the attorney object the plea or brought forth the ~~constitutional~~ constitutional violations dealing with the breached plea agreement and how affects the nature of the offense matters and by taking them away the matter upon the judge the outcome would have been different. The charge itself could have gotten dropped to an lesser included offense and the time / sentence.

This is an case of 'manifested injustice' that involved errors of laws constitutional errors, and technicalities.

The prosecutor manifested injustice by breaching the original plea agreement and by dropping the weapon charges (that are important elements dealing with the offense of arm. robbery) without them elements the nature of the offense is to be dropped to an lesser. included offense. With the Solicitor being aware of this makes this an error of law that violated constitutional right of due process. its also a technicality because it goes against my constitutional right its manifest injustice because the solicitor ~~what~~ violated ~~the~~ the due process clause that guarantees protection of my liberty and life. Therefore the ~~sold~~ Solicitor also manifested harmful error against the defendant, Brandon J. McFadden.

The burden of proof is that the counsel statement on the previous page the counsel knew that things mattered dealing with all the charges so did the solicitor. Also the burden of proof is that I'm only charged with arm. robbery and the weapon charges no longer exist, that's an error of law and the solicitor breached the plea agreement that the counsel knew in her own words jhs witnessed to that therefore the solicitor manifested injustice. That led to an unlawful conviction.

When an guilty plea rest in the significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of inducement or consideration, such promise must be fulfilled. If the prosecution has breached its promise given in an plea agreement whether that breach was intentional or inadvertent it can not be said that the defendants plea was knowing and voluntary for the defendant has been led to plea guilty on a false promise. / State v Baker 156 Idaho 209/332 p. 301 291

The ~~po~~ solicitor manifested injustice and constitutional error that violated the due process ~~of~~ clause during the plea bargain process by breaching the plea agreement and by taking away an important element away from the offense that affected the nature of the offense that should be dropped to an lesser included offense. That the outcome of the plea bargain process ~~had~~ came to an unlawful conviction. Also the solicitor said that if I didn't plea then I would go to trial therefore I was plea involuntarily to an plea that I didn't agree to and is unconstitutional burden of proof from counsel support this on pg. 67 on p.c.r transcript.

Be advised that judicial pressures to plea poses a serious threat to the voluntariness of a guilty plea in violation of the due process clause as well as to the separation of powers envisioned by the constitution. The plea was unconstitutional and unlawful the prosecutor manifested injustice and manifested constitutional error. This deprived the defendant, Brandon J. McFadden of liberty of his constitutional rights. Defense counsel's advice to defendant that he could be convicted of arm-robbery without proof of a physical representation of an deadly rendered counsel's performance deficient. / State V. Muldrow, 348, S.C. 264, 559, S.E. 2d 847 (2002)

The counsel in this case was well aware of the constitutional violations still yet the counsel advised the defendant to plea. The counsel manifested constitutional error by advising client, Brandon J. McFadden, to plea to an plea agreement that was breached by the solicitor, from the breached plea agreement, to wrongly advising client to plea, to being aware of the constitutional violations, to failure to object the error of law, to failure to represent client <sup>with</sup> an effective assistance of counsel. The counsel fell below reasonable standards of professional conduct violation right to effective counsel and due process violation of 6th + 14th amendment. Counsel was ineffective, by failure to accurately advise of elements of lesser-included felony offense and the subsequent advice to accept the plea offer knowing of all constitutional violation constituted ineffective assistance. / U.S. C.A. Amend. 6

Counsel's conduct so undermined the proper functioning of the adversarial process that it can not be relied upon as having produced a just result. / *Strickland v. Washington*, 466 U.S. 668

The neglected to mention the constitutional violations and by not objecting the plea the lawyer insisted on with the plea bargain process aware of the constitutional violations but ~~the lawyer~~ did nothing to provide equal protection of laws, being that by law the constitutional states that the client is entitled effective assistance of counsel in this case the lawyer provided ineffective assistance.

*Padilla v. Kentucky*, U.S. Sup. Ct 2010

Burden of proof is with the p.c.r transcript when the counsel admit of knowing of the ~~negot~~ negotiated of 20 yrs. for all charges. (pg. 66 on transcript) still yet counsel fell to raise the constitutional error in front of the judge and still advised client to plea.

Defendants have a sixth amendment right to effective assistance of counsel during plea bargaining / Missouri v. Frye / Lafler v. Cooper, U.S. Sup. Ct. 2012

The counsel also failed to do an adequate investigation concerning the evidence of the case. The counsel said that she wanted client to plea because ~~she~~ ~~wanted~~ ~~an~~ confession by client. Be advised the counsel could pushed for an motion to 'suppress evidence' concerning the confession. There was no audio, video, or hand written statement to support that evidence.

Plus I didn't fit the description because I didn't have on the same clothing as the suspect the counsel failed to do an adequate and ~~was~~ accurate investigation to see if all the evidence against the client was right and exact. That it wasn't was enough grand to ~~stop~~ file an motion to suppress the evidence and was enough grand for an technicality that violated a constitutional error of due process this being enough grounds to file an 'motion of quash' to quash the indictments. But for counsel's alleged errors I would have not plea guilty and would have insisted on going to trial / Hill v. Lockhart, 474, U.S. 52 (1985)

### Grounds For Relief

- Charge dropped to an lesser included offense along with time reduction
- or
- Sentenced ~~reduced~~ reduction
- or
- Sentenced vacated without anything being brought back up concerning the case

March 8<sup>th</sup>, 2023

Signature: B. M. Cobb

Brandon McFadden / 313848 P.O. B-186  
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