

June 18, 2012

**RECEIVED**

JUN 22 2012

S.C. SUPREME COURT

Daniel E. Shearouse  
Clerk of Court

Brenda F. Stealy  
Chief Deputy Clerk

P.O. Box 11330  
Columbia SC 29211

Dear Clerk of Court Please

Find inside petitioner Prose Response with  
documented <sup>(Exhibits)</sup> Evidence to be file with your  
Honorable Court If possible could you please  
Send copies Back to me for Filing in my  
Records of the entire Prose Brief and documents  
accessibility to Copies it's becoming harder and harder  
to obtain very stringent time schedule to get copies

Thank you for your time and consideration in

This matter Also please be aware  
of the Exhibits, could you please  
Add to this file witnesses statements  
that was sent prior to you in reference  
to 59R Motion

With kind regards

Johnny J. Palen Jr.  
petitioner # 154700

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JUN 22 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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**S.C. SUPREME COURT**

PROSE Memorandum and  
Response to Certiorari to Greenville  
County G. Edward Welmaker Circuit Court Judge

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Johnny Lee Paden Jr.

Petitioner

V.

STATE OF SOUTH Carolina

Respondent

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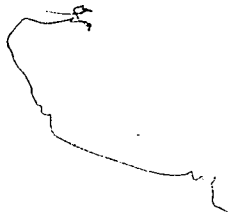
PROSE Response AND Documented Evidence  
For writ of certiorari

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Johnny Paden <sup>SC 0214</sup> 154700

Petitioner

Perry Correctional Institution  
430 OAKLAWN Rd. Pelzer SC.  
29669



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Documented Evidence Exhibits \_\_\_\_\_ 1-42 pages

Exhibit A Victim's Narrative 5 pages

Exhibit B patient care summary Report 3 pages

Exhibit C Description of Evidence 1 page

Exhibit D Crime scene Investigative Report Forensics 1 page

Exhibit E SLED Laboratory Forensic Services Request 1 page

Exhibit F Sled Forensic Lab Report 4 pages

Exhibit G ~~proof~~ proof sheet of pictures from crime scene 7 pages

Exhibit H CODE FIVE office Diaz Report 1 page

Exhibit I Crime Scene Investigation Report <sup>(Detective)</sup> Dan Shaw 3 pages

Exhibit J Forensics Drawing of Crime scene 1 page

Exhibit K Crime Analysis Report Detective Carias 2 pages

Exhibit L DNA Request From Detective Fuller 1 page

Exhibit M Response to SAE Request by PCR Attorney 1 page

Exhibit N Response From Supreme Court about SAE 1 page

Exhibit O Response by Appellate Attorney about New Frivolous Issues 1 page

Exhibit P ~~Response to~~ the Appellate Defense when I located the assailant in this case who fled state prior to trial 2 pages

Exhibit Q Disciplinary Counsel Response 2 pages

## ISSUES Presented

- ① Did the PCR Court err in Finding that petitioner did not present enough evidence to the Amended Issue that his accuser was not present At the trial and that he was Denied his Sixth Amendment Right to Confront his accuser and to have compulsory process for having a complete defense.
- ② Did the PCR Court err in Finding that trial counsel provided effective assistance when he Failed to object to the physical and mental abuse testimony by co-defendant. And Failed to object to the only African American male being excluded from the Jury selection process. PCR Amended Issues. ~~okins~~ <sup>not</sup> Enough Evidence presented
- ③ Did the PCR Court Err Not Finding that petitioner Requested to proceed in his trial Prose or be appointed another Attorney because he thought his attorney was Not being Reasonable in his Representation and ~~that~~ he was ineffective
- ④ Did the PCR Court err in Finding that trial counsel provided effective assistance when he Fail to suppress the petitioner statements During the Jackson Denno Hearing
- ⑤ Did the PCR Judge Err in not reviewing the documented Evidence that proves that there was a miscarriage of Justice.

## ISSUE Presented

- ⑥ Did the PCR Court Err in Not Ruling on whether Petitioner Appellate Counsel was Ineffective.
- ⑦ Did the PCR Court Err in Finding that Trial Counsel provided Effective Assistant when He did not object to the Malice Jury Charge which is no longer good Law In South Carolina, or should Counsel had requested a Manslaughter Charge since the state presented Evidence that Petitioner was In a altercation with decedent prior to his death.

## STATEMENT

PCR Hearing

This Matter is before the court by way of Post-conviction-Relief Hearing which was held on MAY 12, 2011 Petitioner was Represented by Rodney Rohey and the state was Represented by Karen Ratigan. Petitioner at the hearing Informed the PCR Court that he was actually innocent; AND At this time is Alerting the Honorable Supreme court and putting the Court on Notice that he is Actually Innocent which is defined as factual innocence, NOT legal innocence. Bousley U. United States 523 U.S. 614 623 (1998) Here petitioner will show through documented Evidence to pass through the Standard that petitioners case is truly Extraordinary citing Murray, 477 U.S. At 496. Petitioner will Also Argue 8 Issues that the PCR Judg did not Rule on saying that Petitioner did not present enough Evidence.

Here Petitioner presents documented Evidence 42 pages of the case itself from beginning to end showing how and that he could not have committed this brutal Stabbing outside in a parking lot, when the physical evidence itself tells another story. The decedent was stabbed inside of his Apartment as he grab his assailant and Fought them prior to his death. Here we have the Victims Narrative sheet pages 1 to 46 please read what was allegedly said which don't seem accurate because it's nothing but Fabricated lies, Petitioner accuser who Fled the state prior to trial claims this. If you would Read the Trial Transcript nowhere at the trial did it stipulate that we jumped into a car But that we walked away after a push altercation. Also NO Blood could be found outside where the altercation happened. Next: Please Read the Patient Care Summary Report And the Witness Statements who I have already sent to the Supreme Clerk of Court who should have on File. In my opinion After Reading the Patient Care Summary Report the case becomes truly extraordinary being that page 4 in particular specifies that the victim had Anatomical Injuries penetrating Injuries to his Head, Neck, Torso And Extremities Proximal to Elbow and Knee. And no where in the Autopsy Report does the examiner evaluates such injuries. only the Stab Wound and Abrasion to the knee. The decedent was Found Inside his Apartment with his Arms bent across his neck in a defense position with unknown Hair Fibers with roots and cloth in his hands pulled From his assailant. NO DNA Evidence Matched petitioners.

If the Petitioner would have stabbed the decedent 5.3 inches through his heart outside in a parking lot and pulled the knife out of the wound, Blood would have been all over petitioner's clothes and outside in the parking lot because his feet was covered in Blood. Here the decedent, would have to have Grabbed petitioner hair, which was too short (SEE ADDRESS picture) on Jan- of 2006 for murder) tore cloth from his jacket or shirt leaving some kind of tear and walk all the way back to his apartment with cloth and unknown pulled hair in his hands then position himself supine and bend his arms across his neck in a defense position (see Crime scene pictures) in the 42 pages of 'Clear and Convincing Evidence' here the decedent had Blood and DNA Evidence all over his whole body showing he was in a serious struggle inside the Apartment. It is almost impossible for this crime to have happened outside. No Blood was on any of petitioner clothes No DNA matched Petitioner and no one wants to hear about the petitioner altercation with the decedent happened at 5:25 AM or prior No one would wait until 7:15 to call 911 if the decedent was stabbed hour's earlier. Here In this Instance the Petitioner is Alerting The Honorable Supreme Court and Requesting, Asking and Pleading to provide petitioner with the Additional Bite of the Apple of the Right to Additional DNA Testing which the United States Supreme Court has affirmed for prisoners right to seek further Testing to prove that they are Actual innocent.

Petitioner is Requesting For the Remaining Evidence which is the rest of the Unknown Hair Fibers which should Return to the Requesting Agency (SEE DNA Results document July 11, 2007) to be Retested For the Ethnicity of the hair through Microscopic Test are any test that does this. All of the Blood from the Crime Scene to be tested to ascertain whether third party Guilt was a possibility. the decedent was lying in broken Glass with Blood on the Glass Blood spatter ~~was~~ present. If stringing process <sup>(was done)</sup> to determine the trajectory from the impact site could be done through the film or pictures angles and velocity. distant Retest clothes to see if any Blood was on them which was never tested. Petitioner is willing to try to help with any cost that will occur in seeking such test petitioner is indigent but is sure his family will help prove his innocence. Petitioner contends that because he is a indigent prisoner no one has listen are heard his cry that he is actually innocent. Petitioner also contends that a Fundamental miscarriage of Justice has occurred and a judicial corrective process should begin immediately once and if the Honorable court can see the clearly convincing Evidence in this case which is truly extraordinary (Citing Murray)

Petitioner would also like to make the court aware of Page (149 of trial transcript) where the witness for the state a Cartel Drug trafficker was explaining where the decedent was running and was he coming from inside or outside when he was brutally stabbed. SEE Q, A, 4, 5, 6, 7, 8, 9. The witness plainly states that the decedent was running from inside of the apartment when he was stabbed, The solicitor Joyce Monts goes on trying to Lead the witness to say was he coming from outside, and he tells her specifically he was coming from inside she then says you mean outside going inside and he say still yesman inside. What he says is really the truth because the physical evidence supports that the decedent was stabbed inside of his apartment where petitioner had not been at that time and three other suspects hispanic males were there and was only questioned and released These material witness even fled the state prior to trial. Here also Petitioner would like for the court to look at the response of the letters from the PCR Attorney Rodney Richey when Petitioner requested for him to file a SSE motion and he ignored petitioner sending back a letter saying I will file a notice of appeal when an order comes back. Petitioner also wrote Appellate Defense Supreme Court Clerk and Greenville County Clerk showing sufficient cause to insure that all the issues be reviewed because the claims Actual Innocence. Please Review the Pictures and the Film in order to prove that Petitioner did not stab the decedent outside and Third Party quit could have been proven through Experts, and the crime did not happen outside.

## ARGUMENT

### Argument For Issue (1) one

Because Trial Counsel Failed to object to Petitioner accuser not being present or ensure that Petitioner Constitutional Rights of the sixth amendment be upheld given the claim that petitioner presented to the PCR Judge that the indictment was derived from the material witness Margarito Solano Lopez who Fled the state prior to trial (SEE witness List) who stated petitioner fatally stabbed the decedant, Petitioner was Denied the Right to Confront his accuser.

Sixth Amendment does not provide merely that defense shall be made for the accused but, grants to the accused personally the right to make a defense and to compulsory process.

410 K2 (Formerly) 110K.641, 4(1) U.S.C.A. - 6 28 U.S.C.A. 1654. Allocation to defense counsel, or power to make binding decision of trial strategy can only be justified by defendant's consent or outset to accept counsel as his representative.

## Argument

### Argument For Issue two(2)

Because Trial counsel Fail to object to the physical and mental abuse testimony by the Co-defendant Gina Marie Parker, Counsel allowed the jury mines to become In flame by the Co-defendants accusation that he was an abuser. SEE Matthew VS. STATE, 309 SC, 408, 424 SE.2d 477 (1992) ~~(1992)~~ HEARSAY  
Improper Arguments: The DCR Judge had the opportunity to Review the trial transcript on R. 197, 1, 9 - 199, 1, 23 his discretion was significant in determining, that petitioner trial was Fundamentally Fair, or Natter he was deprived of his due process. In Reference to the second part of Issue 2 Batson violations: Petitioner Claims that After the State would not use any of their afforded strikes until the opportunity arose to select an alternate Juror they struck the only African American male intentionally to exclude him from the jury selection process (SEE Fuller v Johnson 114 F3rd 491 The Supreme Courts Stipulates the proper procedure for conducting a Batson Hearing originally set Forth in State v Adams 322 SC 114 470 SE 2d 366 (1994) Citing Puckett v Elem 514 US 765 (1995) First where one party strikes A member of A cognizable racial group, the Circuit Court must Hold A Batson Hearing If the opposing party Request one. Here Trial Counsel Failed to Request A Batson Hearing Denying Petitioner A Right to A Fair Trial.

## ARGUMENT continued

For Issue Two (a) The Purpose of Batson v Kentucky and its progeny are to protect A defendants Right to A Fair Trial by A jury of his peers, protect each venire person's Right Not to be excluded from Jury service for discriminatory reasons, and preserve public confidence in the Fairness of the justice system by seeking to eradicate discrimination in the jury selection process.

State v Haigler 334 SC 623, 515 SE 2d 88 (1999)

Purposeful racial discrimination in selection of the venire violates a defendants right to equal protection that a trial by jury is intended to secure. Batson

476 U.S. At 86) A criminal defendant may object to Race based peremptory Challenges on Equal protection grounds regardless of whether the potential Juror share the Same Race. Powers

V Ohio 499 U.S. 400 (1991) In determining

whether A party exercised strikes in violation of Batson v Kentucky 476 U.S. 79 (1986) Must examine the Facts and Circumstances. Here The PCR Judge

Err'd in not reviewing the whole Record surrounding the strike. State v Staley, 364 SC 604, 545 SE

2d 805 (2001) The demeanor of the Attorney will be the best and only evidence of discrimination Hernandez

V New York 500 U.S. 352 (1991) Through Equal Protection The Supreme Court forbade such practices.

## ARGUMENT

### ARGUMENT TO ISSUE THREE (3)

The PCR Court Erred in not ruling on whether the Petitioner had a Fundamentally Right to proceed in his trial Prose once he Informed the Trial Judge that he Felt that his <sup>(SIX)</sup> Amendment Right to have a effective Representative was being violated. The Supreme Court held that A defendant in a state Criminal trial has a Constitutional Right to proceed without Counsel when he voluntarily and ~~IN~~ INTELLIGENTLY elects to do so. And a State may not Force a Lawyer upon him when he insist that he wants to conduct his own defense. Foretta v California citing.

### ARGUMENT For ISSUE (4)

Because trial counsel Failed to suppress the Petitioner Statement, During the Jackson Denno Hearing After the Judge specifically stated Mr. Farnsworth would you like to challenged the voluntariness of your client statement (page 32 Trial Transcript) Counsel states: No your honor I would like to hear the States Case First. By. counsel being Fully aware that the petitioner was under the influence of Alcohol and drugs control substances (SEE Page 31) Question: Now are you aware that Mr. Paden might have been using Drugs & Alcohol Answer: Yes Counsel automatically became ineffective at this juncture and denied petitioner Due process of Law: SEE MCKnight vs. STATE, 378 S.L. 33, 46, 661 S.E.2d 354, 360 (2008) Failure to Challenge the States Evidence.

## ARGUMENT

### Argument For ISSUE (5)

All throughout the Evidentiary Hearing Petitioner Informed the PCR Court that There was DNA Evidence that proves his Innocence, AND He was Requesting that the Court Review all of the documented Evidence His Counsel would not help him present the documents in the correct Manner, he only wanted to talk about them on the Stand knowing that his Credibility would not out weigh trial Counsel, Petitioner also requested for PCR Lawyer to get an expert opinion was denied and ignored on Both Request so he told the Court that he was not a Killer And was actually Innocent and It could be proven IF someone would look closely At the Evidence. He also requested A S9E motion Completely Ignored.

# Argument

## Argument For Issue six(6)

Because Appellate Council Failed to raise any of petitioner claims which petitioner contends was Non-Frivolous and Appellate counsel failed to give any supporting Facts as to why he Filed a Anders Brief therefore he became ineffective for the Unsurpation of Certain Fundamental decisions, and of course it can violate the Constitution. SEE ANDERS VS. California U.S. 738, 87, SCT. 1396, 18 L.ED 2d 493(1967) AND Faretta V California 422 U.S. 806 95 SCT. 2525, 45 Led 2d. 562 (1975) Justice Brennan States that Counsel's Failure to Raise on Appeal Non Frivolous Constitutional Claims upon which his client has insisted must constitute Cause And Prejudice for ~~any~~ ANY resulting procedural Default under State Law. SEE Wainwright V Sykes 433 U.S. 72, 97, SCT. 2497, 53 LEO 2d 594 (1977) The Court of Appeals went on to hold that having demonstrated that appointed Counsel Failed to Argue Colorable claims at his Request, An Appellant need not also demonstrate a likelihood of success on the Merits of those claims ID. At 434, Appellate Counsel Failed to raise at least one of Appellant claims. A prose Brief which Appellant Filed is NO Substitute for the Advocacy of experienced Counsel (Ibid.) Appellate Counsel may be ineffective for Failing to make a Record sufficient for Review. SEE Ezell V STATE 345 S.C. 312, 548 S.E. 2d. 852 (2001),

# Argument

## Argument For Issue seven(7)

Because Trial Counsel Failed to object to the Malice Jury charge Counsel's performance

was constitutionally deficient for Failing to Request an instruction on the theory of the defense, U.S. v WOLMY 133 F3d 758,

The Error is that his honor had no Right to Instruct the jury that they may Infer Malice from the Mere Fact of Killing with a deadly weapon Calculated to do serious bodily harm or to take Life, For the reason that this is a charge on the Facts, Contrary to the Constitution, in that it undertakes to intimate to and ~~insure~~ <sup>insure</sup> the jury what Facts in the Case ~~are~~ evidence of Malice. Also it was Error, in that after all the Evidence is out the presumption of malice from the use of A deadly weapon Fades from the Case, and the Jury must Find Malice If at all from the evidence without Any Aid From the Court. ~~So~~ Trial Counsel should have Also requested A Jury Instruction on Manslaughter since the State presented Evidence that petitioner Fought the decedent prior to his Death. In Mulleney v Wilbur 421 U.S. 684 Holding that the Due process Clause Forbids a State From placing the burden ~~on~~ on the Accused to prove his Actions Reduced the Crime from Murder to Manslaughter.

## Conclusion

Based on the Documented <sup>(Exhibits)</sup> Evidence that petitioner presents in his Prose Response and the Issues that petitioner presents, Johnny Paden should be allowed to have Retesting of DNA Evidence and full briefing, and because petitioner contends that he is actually innocent not legal innocent but factually innocent citing Bousely v. United States He contends that his case is truly extraordinary citing Murray: so certain exceptions should be made even other criminals just claiming to be innocent. Petitioner contends that writ of Certiorari should be granted to allow full briefing on the issues and be allowed to seek DNA Evidence to prove his innocence.

Respectfully Submitted,

This 18 day of June 2012.

Johnny L. Paden Jr.

Johnny L. Paden #454700  
Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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CERTIORARI to Greenville County  
PROSE BRIEF and Documented Evidence  
G-Edward Welmaker, Circuit Court Judge

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Johnny Lee Paden Jr.  
# 00154700

Petitioner

v.

Respondent

STATE OF SOUTH CAROLINA,

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Certificate of Service

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I certify that a true copy of the Prose Brief and Documented Pictures and Evidence for Writ of Certiorari in this case has been sent to the Supreme Court which authorize such a response from petitioner through correspondence received by petitioner on June 4, 2012 Letter dated May 31, 2012 At the Supreme Court of South Carolina Daniel E Stearouse, Clerk of Court P.O Box 11330 Columbia S.C. 29211

Sworn To Before me this 18th day  
of June, 2012

Johnny Paden  
Johnny L. Paden #154700  
(prose) Petitioner

Stewart Mulvaney  
NOTARY PUBLIC of SOUTH CAROLINA  
My Commission Expires January 7 2016