

Marshall Ray Miller  
#249557  
Lieber Correctional Institution SB-56  
P.O. Box 205  
Ridgeville, SC 29472-0205

April 4, 2014

The Honorable Daniel E. Shearouse  
Clerk  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re:** *Marshall Ray Miller, #249557, Petitioner, v. State of South Carolina, Respondent*  
**Appellate Case No. 2013-001076**

Dear Mr. Shearouse:

Please find enclosed for filing in the above-referenced petition for writ of certiorari the original and six (6) copies of Petitioner's Motion to Proceed Pro Se. Also enclosed is proof of service on my current counsel of record and counsel for Respondents.

If this motion is not in proper form, please notify me so that I may correct any deficiencies.

Your assistance in this matter is sincerely appreciated.

With kindest regards, I am,

Sincerely,

*Marshall Ray Miller*

Marshall Ray Miller  
PETITIONER

Cc: John D. Compton, III, Esq.  
Ashley Anne McMahan, Esq.

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APR 11 2014  
**S.C. Supreme Court**

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APR 11 2014

APPEAL FROM ABBEVILLE COUNTY

Honorable R. Lawton McIntosh, Circuit Court Judge

**S.C. Supreme Court**

Appellate Case No. 2013-001076

Marshall Ray Miller, #249557 ..... Petitioner

v.

State of South Carolina ..... Respondent

**PETITIONER'S MOTION TO PROCEED *PRO SE***

Marshall Ray Miller, the undersigned Petitioner, *pro se*, respectfully moves this Honorable Court, pursuant to Rule 240, SCACR, to relieve counsel of record and grant Petitioner leave to proceed in this matter *pro se*. Petitioner would show this Court the following in support of his motion:

1. Petitioner's PCR (2009-CP-01-105) was denied on March 25, 2013 by order of the Honorable R. Lawton McIntosh;
2. Judge McIntosh denied Petitioner's Rule 59(e) motion to alter or amend judgment on issues omitted from the March 25<sup>th</sup> order;
3. Due to a conflict of interest with the South Carolina Office of Indigent Defense, the Petitioner moved this Court for a substitution of counsel.
4. By an order dated December 17, 2013 this Court appointed Petitioner's PCR counsel [John DeVore Compton, III] to perfect the petition for writ of certiorari;
5. Petitioner, based on a conflict of interest with Mr. Compton arising from [his] representation on PCR, moved this Court to substitute Mr. Compton on January 3, 2014;

6. By order dated February 6, 2014, this Court denied Petitioner's motion to substitute Mr. Compton;
7. Petitioner corresponded with Mr. Compton on March 10<sup>th</sup> and March 20<sup>th</sup> regarding issues to be raised in the writ of certiorari;
8. Mr. Compton responded in correspondence dated March 4<sup>th</sup>, March 14<sup>th</sup>, March 25<sup>th</sup> and March 28<sup>th</sup>, ultimately informing Petitioner that counsel was filing a one (1) issue meritorious petition, which would not include any of the issues Petitioner suggests as meritorious; and
9. Petitioner's remaining issues will be barred from federal habeas review if not exhausted before this Court, pursuant to 28 USC §2254(b) (1).

Petitioner is completely cognizant that counsel enjoys discretion in the determination of which issues on appeal are meritorious. Counsel does not enjoy unbridled discretion where the same precedent of *Jones v. Barnes*, 463 U.S. 745 (1983) allows Petitioner to raise ineffective assistance of appellate counsel and meet the burden of showing that the issues omitted had more merit than those counsel selected. However, that option is not available to Petitioner on certiorari where no collateral procedure remains available and *Martinez v. Ryan*<sup>1</sup> is inapplicable in the context of appellate counsel. Petitioner is quite literally bound by counsel's biased and unstudied decision in this matter and will suffer the ultimate prejudice of procedural bar in the federal court if Petitioner's hands remain tied.

Petitioner submits that an accused may waive the right to counsel and proceed *pro se*, *See Faretta v. California*, 433 U.S. 806 (1999). Both the federal and state constitutions allow a criminal defendant to represent himself where the waiver is voluntary and intelligent, *see State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014).

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<sup>1</sup> 132 S.Ct. 1309 (2012)

Petitioner submits that his state and federal rights and interests are best served if he is allowed to proceed *pro se* in this matter. Petitioner voluntarily and knowingly waives counsel in this matter.

Petitioner formally moves this Honorable Court for the following relief:

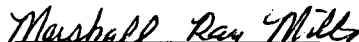
- 1) Relieve John D. Compton, III as counsel and grant leave for Petitioner to proceed *pro se* in this writ of certiorari;
- 2) That Mr. Compton complete compiling the certiorari Appendix;
- 3) That Mr. Compton provide the necessary copies of the Appendix to this Court and Respondent;
- 4) That Mr. Compton provide Petitioner a copy of the Appendix; and
- 5) Allow Petitioner sixty (60) days from the date of receipt of the Appendix in which to file the petition for writ of certiorari in conformity with the rules, with the exception of the color of the cover.<sup>2</sup>

### CONCLUSION

**WHEREFORE**, based on the foregoing facts and assertions, Petitioner respectfully moves this Honorable Court to relieve counsel and grant Petitioner *Pro Se* status, and order counsel to complete the Appendix and copies thereof.

April 4, 2014

Respectfully submitted,

  
MARSHALL RAY MILLER  
#249557  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

**PETITIONER**

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<sup>2</sup> Petitioner is responsible for submitting the requisite number of copies of the Petition following the final brief.

STATE OF SOUTH CAROLINA  
In the Supreme Court

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Honorable R. Lawton McIntosh, Circuit Court Judge

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**PROOF OF SERVICE**

Marshall Ray Miller, the undersigned Petitioner, certifies that he has mailed a true and correct copy of Petitioner's Motion to Proceed Pro Se to petitioner's counsel of record and counsel for Respondent by placing a copy of same in the U.S. Mail, first-class postage affixed thereto, this 4<sup>th</sup> day of April 2014, addressed as follows:

Ashley Anne McMahan, Esq.  
Assistant Attorney General  
Office of South Carolina Attorney General  
P.O. Box 11549  
Columbia, SC 29201-1549

John D. Compton, III  
Compton Law Firm, P.A.  
212 Grace Street  
Greenwood, SC 29649

*Marshall Ray Miller*  
MARSHALL RAY MILLER  
#249557  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

**PETITIONER**

MACHALL R. MELLER # 249557

Lieber C.I. SB-56

P.O. Box 205

Ridgerville, SC

29472

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LIEBER C.I.

Honorable Daniel E. Shearouse  
Clerk

Supreme Court of South Carolina

P.O. Box 11330

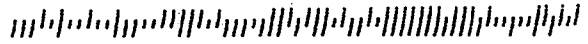
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S.C. DEPARTMENT OF CORRECTIONS



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