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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

September 3, 2014

RECEIVED

SEP - 3 2014

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk of Court  
The South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

Re: Donnell McFadden v. The State  
Appellate Case No. 2013-002667

Dear Mr. Shearouse:

Please accept the pro se petition filed by the above named individual in response to the Johnson petition I recently filed with the Court in the case. Petitioner inadvertently mailed this to Daryl J. Corbin, Esquire, of the Corbin Law firm, who forwarded it to our office.

If you have further questions, do not hesitate to contact me.

Sincerely,

  
Benjamin J. Tripp  
Appellate Defender

BJT/pcm

Enclosure

# Corbin Law Firm

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POST OFFICE BOX 447  
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DARYL J. CORBIN  
ATTORNEY AT LAW

TELEPHONE: (843)667-6119  
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September 2, 2013

Ms. Pam McKoy  
SC Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201

Re: Donnell McFadden v. State of South Carolina  
(Case No. 2012-CP-21-1789)

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S.C. Supreme Court

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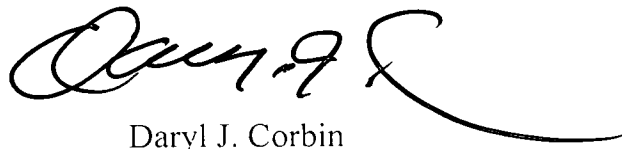
SC OFFICE OF  
APPELLATE DEFENSE

Dear Ms. McKoy:

In accordance with Ms. Kimberly McCall's conversation with my Paralegal this morning, attached please find the certified true copy of the Pro Se Brief for Writ of Certiorari Mr. Donnell McFadden ("McFadden") filed with the Florence County Clerk of Court's Office on August 21, 2014. I understand your office is handling Mr. McFadden's appeal. If you have any questions or need any additional information, please do not hesitate to contact me.

Thank you; and, with warm regards, I am

Sincerely yours,



Daryl J. Corbin

DJC/cbs/6453  
Enclosure

cc: Mr. Donnell McFadden

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

FILED  
2014 AUG 21 PM 3:57  
CONNIE REEL-SHEPARD  
CCCP & GS  
FLORENCE COUNTY, SC

\_\_\_\_\_  
Certiorari to Florence County  
William H. Seals, Jr., Circuit Court Judge

DONNELL MCFADDEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002667  
2012-CP-21-01789

\_\_\_\_\_  
PRO SE BRIEF FOR WRIT OF CERTIORARI

CERTIFIED: A TRUE COPY  
*Connie Reel-Shepard*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

DONNELL MCFADDEN  
PRO SE

LEE CORRECTIONAL INSTITUTION  
RICHLAND B POD 269  
990 WISACKY HIGHWAY  
BISHOPVILLE, SC 29010

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ISSUE PRESENTED

Whether the trial court inappropriately left the burden of persuasion on the party opposing the Batson motion to show that a peremptory strike was not racially discriminatory?

## STATEMENT

On October 2, 2008, the Florence County Grand Jury indicted Petitioner Donnell McFadden for distributing crack cocaine. App. 244-245. The State alleged that on April 2, 2008, Petitioner sold crack cocaine to a confidential police informat in Lake City App. 47, line 25 - App. 49, line 20. The State had videotape evidence showing Petitioner had two prior convictions for distribution and was facing a mandatory fifteen - year sentence for a third. App. 163, line 22 - App. 164, line 8 ; App. 171, lines 13-16.

Fortunately for Petitioner, Attorney Scott Floyd raised an Batson Motion towards the solicitor, John Jepertinger for the way he was selecting the jury. App. 222, lines 2-25 ; and also App. 223, lines 1-24. However, the Honorable Judge Russo ruled that the solicitor Mr. Jepertinger provided an racially neutral reason towards the challenge. Which petitioner will show he did not provide an proper explanation towards the three - step inquiry for evaluating whether a party executed a peremptory challenge in a manner which the Equal Protection Clause Protects under the Fourteenth Amendment to the United States Constitution.

Unfortunately for Petitioner, the Honorable Judge Russo found that the solicitor John Jepertinger clearly shown an racially neutral reason why the Batson Motion was proper. App. 230, lines 4-25 ; and also App. 231, lines 1-6.

Accordingly, the reasons stated why the strikes was made is clearly an improper way of granting an racially neutral reason as to why the challenge prevailed. At the conclusion of the trial on April 25, 2009,

State v. Wilson, 545 S.E.2d 827 (2001). A court is "bound by the trial court's factual findings unless they are clearly erroneous". Id at 545 S.E.2d at 829; see also; State v. Edwards, 682 S.E.2d 820, (20-09); State v. Haigler, 515 S.E.2d 88 (1999)(" The trial court's findings regarding purposeful discrimination one accorded great deference and will be set aside on appeal only if erroneous.").

Appellate Counsel's performance was deficient based on sandbagging of the Batson challenge proving discrimination. App. 230, lines 13-15.

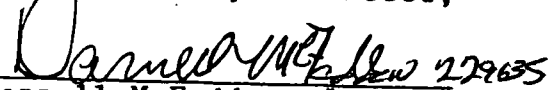
Therefore, Petitioner not only had this issue waived during the appellate process purposefully from the deficient performance of Appellate Counsel. It's still prejudicing the Pettitioner from ever receiving an fair trial. Which this court should zero in on and rule on the merits of this petition.

#### CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Donnell McFadden's petition to allow full briefing on the issue at hand and after viewing vacate his sentence.

This the 13 day of August 2014.

Respectfully Submitted,

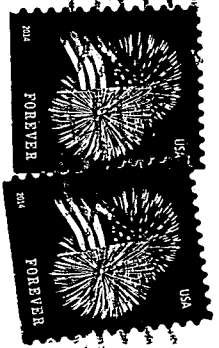


Donnell McFadden, #229635

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