

March 28<sup>th</sup> 2015

State of South Carolina  
County of Greenville

Jonathan M Campbell  
petitioner

v.  
State of South Carolina  
Respondant.

**RECEIVED**

APR . 7 2015

S.C. Supreme Court

Appellate case No. 2014-001428

Motion to Amend and Clarify writ  
of CERTIORARI

I the petitioner moves before this honorable court by way of motion to Amend petition for writ of certiorari. I'm moving Pro se because I feel all of my issues are not being presented for preservation in my PCR hearing or by my representing attorney Susan B Hackett

Representing attorney Susan B Hackett, filed a petition for writ of certiorari with one argument on trial counsel's deficient performance for failing to object to trial judges erroneous jury instruction

on malice.

Petitioner thinks there are other issues that could and should be presented so they can be preserved for federal review if the case has to moved to that court.

Petitioner is an inmate and has been on lock up for the last four years.

He is under the Mental Health program at Lee County Corrections.

Petitioner has depression, anxiety and also has problems remembering and understanding law and other information.

Petitioner had someone that knew alot more about law than he does helping him but has not had the benefit of any help over the last 11 months.

Petitioner is lost about how to do this but wants these issues ruled upon because they were not addressed in his PCR as they should have been under SCRCP 71.1(d) that states that appointed counsel: "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

Under this rule the PCR attorney should have made sure "All available grounds for relief are included in the application and shall amend if necessary"

Petitioner ask this Honorable Court to consider grounds not raised in the PCR trial under, Martinez v. Ryan, 132 S. Ct. 1309 ineffective assistance of PCR counsel.

Futhermore, under rule 71.1(d) of the SCRPC rule; how can all of Petitioners issues be raised if Attorney nor Petitioner has never seen the Rule 5, Brady discovery material?

This issue was brought up in PCR court.

The Following issues and arguments are what the Petitioner would like the court to rule upon so they can be preserved with the petition Sosad B Hackett filed on my behalf.

1) Ineffective Assistance of Trial and Appeal Counsel for Failing to Object to ~~the Prosecutorial Misconduct in Closing~~ Arguments, and failing to Raise Issue in P.C.R.

a) Tr. p. 435 Ln. 11-15 [closing arguments]

"were talking about a robbery, possible robbery, crack heads, crack dealers and all this stuff. But I'm going to just say at the beginning, Jermain Proctor was a human being who did not deserve to die and have his body treated like this."

I was not on trial for robbery, possible robbery. I was not on trial for being a drug addict or a drug dealer and all this stuff.

These statements by the prosecutor served no other purpose but to discredit the defendant and inflame the passion of the jury based on the mistreatment of the victims body and this emphasis was improper.

b) Tr. p. 438 2-16 [Closing argument]

"He's going to define malice aforethought.

~~He's going to tell you something along the~~  
 lines that malice aforethought is a evil  
 heart, evil intention, A person -- A heart  
 that is bent on doing wrong. Malice is  
 basically doing something that aint right.  
 Just meanness, in my opinion. It's just  
 meanness, just being mean."

"Like when the defendant said in  
 answer to his own lawyer's question, do  
 you have any remorse about the killing?"  
 "Not about the killing, about me and my  
 family." "That shows yall malice. He  
 could care less about Sermain Proctor.  
 Thats what he said to his lawyers question.  
 Do you have any remorse about the  
 killing? Not about the killing, about me and  
 my family maybe. That is malice, ladies  
 and gentlemen. That is evidence of malice  
 cause he could care less."

These remarks constitute a burden  
 shifting presumption based on the  
 solicitors fabricated version of testimony

that is false and misleading as to the respects of malice.

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TR. p. 362 Ln. 25 — p. 363 Ln. 12  
[actual testimony]

Q. "And you want the jury to believe you had nothing to do with the killing"?

A. "Absolutely I had nothing to do with the killing."

Q. "The other question is, why do you remember the details so."

A. I can't forget them. It's just burned into my memory. I lay down over at that jail every night and pray to God to take that out of my head. And every night it's still there, every day. I'll never forget it.

Q. Do you feel remorseful about this?

A. Yes, sir, I do. not about the killing, but about being there afterwards, I did, but I didn't think I had any other choice.

It is clearly evident on ~~Ex~~ 10 the defendant stated the he did have remorse, ~~Get "not about the killing"~~

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The solicitor states twice, <sup>#</sup> There was no remorse "about the killing" only "about [him] and [his] family" which is not supported by the trial records. Furthermore the solicitor states the defendants lack of remorse "is malice", "cause he could care less".

This is clearly a burden shifting pre-  
sumption and mandates malice for lack of remorse and left the defendant without any form of rebuttal.

At the PCR hearing the applicant was asked to clarify his statement about the lack of remorse for the killing. It was to his contentions that there was no remorse "about the killing", because as he understood it, to admit remorse would be to admit he in fact killed Mr. Proctor, ~~the deceased vic-~~ <sup>when he did</sup> ~~not~~. The simple assertion of lack of ~~malice~~ remorse cannot constitute malice when the unremorseful did not commit the killing.

c) Tr. p 438 23-24 [closing arguments]

~~"Did you see how he was smiling as he said, not about the killing? Got no remorse about that."~~

This remark sought no purpose other than to inflame the passion of the jury and was a totally fabricated accusation.

Tr. p. 378 Ln. 16-24 [actual testimony]

Which states:

Q. And all of a sudden, for no reason, Carl hits you in the back of the head ~~for~~ ~~no reason~~ with a hammer. Is that what you're telling this jury.

A. That's exactly what I'm telling the jury.

Q. You smile when you say that. You think it's funny?

A. No, Sir, But your implying that I'm lying.

---

Q. Yes, sir, I am

A. And I'm not. You asked me a question and I answered it.

This portion of the trial record shows the true statements of both parties. The solicitor is vindictively and maliciously fabricating testimony to discredit the defendant, stating that he is smiling while saying "not about the killing." "Got no remorse about that." Nowhere in the trial record is there testimony to support solicitor's closing arguments and defendant had no rebuttal to this, and trial counsel failed to object.

TR. p 444 24-25 -  
 d) TR. p. 445 Ln. 2-6 [closing arguments]

" But he wasn't smart enough to know that ~~if I give these crack addicts rocks, they're going~~ to smoke it all and then they might not do what they're supposed to do? What self-respecting crack dealer does that? Does he think we're stupid? Does he think that everybody else in this world was born at night? And they might have been but not last night. We know better than that.

Here the solicitor is inserting his personal opinions and beliefs about dealers while attacking the defendants credibility. Furthermore, he is telling the jury they are Stupid if they believe the defendants testimony.

e) TR. p. 445 Ln. 17 - p 446 Ln. 1 [closing argument]

" And by the way. He said they had more crack. They never said Mr. Proctor said, well hey, give me my crack back. Give me those other two or three rocks you got. Kind of left that out, didn't he? You know why? Because it's hard to remember a lie."

"My mama used to tell me when I was a child, It's easy to remember the truth because ~~the truth is always the truth, son. You can~~ remember next week, next month, two years later. But when you tell a lie, you've got to remember the lie you told. And that's what we've got here from this man."

These remarks are a direct attack to the defendant's credibility through speculation. The solicitor was obligated to ask these questions during cross examination to determine ~~their~~ factual basis and cannot now use them to shift the burden and discredit the defendant where he has no source to refute these conclusive contentions. Furthermore, he gives the jury his mother's personal opinion as well as his own personal beliefs that "it's easy to remember the truth," "But when you lie you got to remember the lie you told." Which places in the minds of the jurors that simply because the defendant remembers the facts of the incident he must be lying whereby discrediting his testimony.

f) Tr. p 449 Ln. 11-17 and 19-22 (closing arguments)  
also Ln's 6-10

Ln 6-10 " Carl Southerland has taken his responsibility. He cut a deal, no question. And I believe he is just as guilty of murder as that man. But when you deal and try to get convictions against bad people, sometimes you have to do business with bad people.

Ln. 11-17 And the reason we're here today is because Carl Southerland was given a deal. He pled guilty to voluntary Manslaughter in exchange for his testimony. And we as prosecutors have to make a decision who we thought was more responsible. Not that the other one wasn't, but who's more responsible.

In these remarks the solicitor is testifying before the jury as to the credibility of the states witness as well as placing the culpability of the crime on the defendant.

Ln 19-22 what self respecting man tells his mother that he killed somebody when they didn't, then puts that on his mothers heart and lets it stay there for 3 months

Here the solicitor sought to inflame the passion of the jury and attacked the defendants moral turpitude by claiming he is a man devoid of self respect for telling his mother he killed someone when he didn't and letting it stay there for 3 months. This places ~~an~~ arbitrary factors into the deliberation of the jury.

and deprives the defendant of a fair trial.

Ta p 114 Ln 1-14 [Actual testimony]

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Q. "So a month -- July, August, September. Three months later he first tells you that somebody else did it, is that correct?"

A. No, Sir

Q. Okay. Now I'm ---

A. That's the ---

Q. --- confused again.

A. Yes, sir. I confused you, I guess. That is not the first time that he told me that he did not kill the man. That's the first time he gave me details of what happened. He told me several times ~~at~~ over the phone that, Mama, I didn't kill him.

Q. So you have ---

A. While he was in Alabama

This is the actual testimony from Jonathan Campbell's mother stating she

had several conversations with the defendant where he said. "Mama, I didn't kill that man," from Alabama.

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These statements by the solicitor were false facts of the evidence and testimony

g.) Tr. 450-451 LH 22-1-23 [closing argument]

"~~Why on god's earth would Carl Southerland~~

then get up next to him with a screwdriver? He's got a knife. He just killed a man with a knife. Why you reckon he would tell his mother he's standing here next to me with a screwdriver up against me? He would have said, he ~~use~~ would have use a knife.

The reason he said screwdriver is because he was making it up as he went along, ladies and gentlemen. Just think about it?

Does that make since? And screw drivers can be very dangerous insterments, But it aint so dangerous from a fifty one year old man if you a thirth-one year old healthy man by him, that you going to go tell your mama you killed somebody, you are so afraid of him.

Ladies and gentleman, the story is bogus. The story is insulting. Find Jonathan Campbell guilty of the crime he committed, murder.

He killed Jermain Proctor, or according to his own [testimony], He held him while Carl Southerland killed him. And either way he's guilty cause this aint about bodies in cars.

for two days. This aint about burglaries.

This ~~aint~~<sup>is</sup> about two crack heads that robbed  
~~a drug dealer and took his money and took his~~  
car and failed to ~~to~~ even do anything decent  
with his body. Thats all this is about. Two  
crack heads robbing a drug dealer and stealing  
his money. Thats all this is, Dont let one  
of the crack heads go, Please. Thank You!"

The prosecutor should have inquired into the ~~the~~ facts of these statements and ~~questions he is asking the jury to believe~~ are factual. This shifts the burden to the defendant to prove why Southerland had a screwdriver instead of a knife. And the solicitors direct opinions and testimony that it would be more probable Southerland had a knife verses a screwdriver and why, was an attempt to discredit defendant.

The solicitors direct statement "the story is bogus", "the story is insulting", would place in the minds of the jurors that to find the defendant's story credible would be an attack to their own character.

"Find Jonathan Campbell guilty of the crime he committed, murder."

This statement gives the the jury the notion and incentive to find the defendant guilty of the crime of murder based on the fact the prosecutor has already done so.

Then the solicitor sought to confuse the jury and say that Southerland killed Mr. Proctor yet the defendant held Mr. Proctor, which the testimony does not support, and

"The hand of one is the hand of all" so either way the defendant is guilty" creates a ~~conclusive presumption of guilt based on the~~ solicitors own testimony.

Counsel's deficient performance fell below professional norms by not objecting to these remarks. Prejudice is shown through the permissive presumption of malice in all of these remarks which introduced an arbitrary factor into the jury deliberations. And had it not been for the admission of these remarks there is a possibility Applicant would have been acquitted of murder.

Prejudice is also shown by the Solicitor introducing fabricated burden shifting testimony not supported by the trial record and testified to the credibility of his own witness while discrediting the Applicant, depriving him of a fair trial.

### Conclusion

Whereby the Applicant ask the Honorable Court to please Rule on the merits of these issues,

TR. P 440 LM 14-21  
i #) "

All the other stuff that I could  
tell you about, All the other stuff  
that I could try to inflame you  
with about how ~~its~~ there's a body  
that's decomposing in the back seat  
for two days and it's a hundred  
degrees in Alabama in June. I'm  
not going to ~~do that~~ get into that.  
I'm not going to do that to Mr  
Campbell's family or to the victims  
family because it's not --- It's not  
relevant. Not directly.

This remark was for no other reason but  
to inflame the jury

and testified to the creditability of his own witness while discrediting the Applicant, depriving him of a fair trial.

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Counsel was also ineffective for not objecting to the jury charge of "the hand of one is the hand of all." nowhere in the trial record is there any testimony to support a common design and purpose to kill Mr. Proctor which is an element of that charge. In fact there is testimony by Applicant and the states witness to refute such a claim, and counsel should have objected to the charge.

H) TR. p. 440 Ln. 14-21

"  
All the other stuff that I could tell you about, All the other stuff I could try to inflame you with about how its a hundred degrees in Alabama in June. I'm not going to get into that. I'm not going to do that to Mr. Campbell's family or to the victims family because its not, Its not relevant, not directly.

now there is a decomposed body in the back seat

These remarks were for no other reason other than to inflame the passion of the jury as the prosecutor said before he did exactly that. Inflame the passion of the jury

i) TR. p 272<sup>2nd</sup> 2-17 [redirect examination by Mr. Weston]

L16

2. Q. Are you changing your whole story?
3. A. No, Sir
4. Q. What did you change today?
5. A. The only thing I really changed that was
6. a lie, sir, was the hammer, the gun, the
7. threat to kill John and the body.
8. Q. In 2005 who did you tell the Alabama
9. Authorities killed Jermaine Proctor?
10. A. Jon Campbell
11. Q. And today who are you telling this
12. court under oath, killed Jermaine Proctor?
13. A. Jon Campbell
14. Q. Has that changed at any point since
15. you were first arrested?
16. A. No, sir, it has not.

~~and~~ The prosecutor was deliberately misleading the jury with known perjured testimony and ~~specified that the states witness~~ was testifying under oath ~~as he~~ indicating that he was telling the truth even as he was committing perjury elicited by the solicitor

This was done for no other reason but to discredit the defendant and bolster the credibility of the states witness.

A prosecutors deliberate deception of a court and juries by the presentation of known false evidence is incompatible with rudimentary demands of justice. The failure to correct false evidence is as reprehensible as it's presentation and Mr. Weston did both.

on pages 13-16 of this motion Applicant talks about a meeting that took place on ~~Saturday, January 2010~~ January 10<sup>th</sup> 2010, and testified to this meeting at Applicant's P.C.R. Hearing.

The prosecutor knew of this meeting and had not made any plea offer. This meeting was designed to find out who killed Mr. Proctor by telling co-defendants that who ever killed Mr. Proctor had to take responsibility for the murder and tell the family why they had done it for a plea they would try to get ~~it~~ before trial.

The prosecutor was called and notified of the results of this meeting and agreed not to go against defendant's attorney's if they were to ask for the plea before trial.

This last question the jury heard from the State's witness in redirect examination was ~~perjured~~ <sup>perjured</sup> testimony that the prosecutor knew to be ~~per~~ perjury. The prosecutor led the witness to an affirmative answer knowing it to be perjury and then thanked the witness for his ~~cooperation~~ cooperation.

A prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. The failure to correct false evidence is a reprehensible act in presentation and this prosecutor

failed to correct known false testimony.

1) US v Young, 476 US 1, 18-19 (1985)  
C" The prosecutor vouching for the credibility of witness... carries with it the imprimatur of Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence.

Marshall v. Hendricks 307 F.3d 36, 65  
(3<sup>rd</sup> Cir, 2002) prosecutors mischaracterization of testimony improper.

Boyd v. French 147 F.3d 319, 328, 29 (1998)  
C prosecutors statements during closing arguments regarding personal opinion of defendant's credibility improper

US v. Garcia-Guizar, 160 F.3d 511, 520  
(9<sup>th</sup> Cir 1998) prosecutors statements describing defendant as "a liar" improper because personal opinion regarding defendant's credibility.

US v. Smith, 982 F.2d 681, 684 (1<sup>st</sup> Cir 1993)  
prosecutors statement that defendant was guilty implied personal belief rather than government's position

## II Failure to raise ineffectiveness assistance of Direct Appeal counsel

1) PCR counsel failed to raise ineffectiveness assistance of Direct Appeal Counsel.

Direct appeal counsel perfected petitioner's appeal on the grounds that judge failed to charge jury with accessory after the fact of murder when the judge said there was evidence of that charge.

The court of appeals Affirmed the conviction saying "an appellant cannot argue one ground in support of a jury charge at trial and another ground in support of the charge on appeal."

The court also held that, "even if the issue was preserved, the judgment would still be preserved because "a defendant is not entitled to a charge on lesser related offenses"

Senior Appellate Defender Joseph L. Savitz, III represented Appellant. Mr. Savitz, was a Senior Appellant Defender. Mr. Savitz was retiring at the time of appellants direct appeal.

Appellant feels that Mr. Savitz was not effective for presenting "failure to charge jury with accessory after the fact of murder" Every first year graduate of law school knows that accessory after the fact is not a lesser included offence of murder and is not entitled to that charge.

Not only did he present this issue with no merit ~~to~~ to the court of appeals but to highlight his ineffectiveness didn't even argue the same grounds from the trial.

There was other grounds with merit that could have been raised, one being prosecutorial misconduct.

Under the United States Constitution I am supposed to be afforded effective assistance of direct appeal counsel and I was not and the issue was not raised by my PCR attorney in PCR trial.

Repetedly in the direct appeal initial brief Mr. Savitz the Senior appellate defender says that I should be entitled to the lesser included offence of murder of accessory after the fact. when it is not and never has been.

### III

In the petition for writ of certiorari, my attorney states that there was no motion to Alter or Amend (59)(e) filed.

I would like to bring it to the attention of the court that Petitioner did write his attorney three days after PCR trial and did ask her to submit a (59)(e) with grounds to alter and amend judgment.

Representing attorney did not file or submit the (59)(e) to the court.

Petitioner did send a copy of said (59)(e) motion ~~to~~ to the Clerk of court for the Supreme court of South Carolina and it should be on file there.

## Conclusion

Petitioner respectfully request that this court rule on these issues.

Respectfully Submitted  
Jonathan M. Campbell  
petitioner

This 28<sup>th</sup> day of March, 2015

Daniel E. Shearouse  
Clerk of Court  
Po Box 11330  
Columbia S.C. 29211

Jonathan  
**RECEIVED**  
APR 7 2015  
S.C. Supreme Court

Appellate Case No. 2014-001428

Mr. Daniel E Shearouse,

Enclosed is a motion to Amend the Writ of Certiorari my attorney filed on my behalf.

I am indigent and humbly ask that you clock stamp and send me a copy back as proof and so I have a record of this motion

I ask that these issues be ruled upon by this Supreme Court of South Carolina.

This day 28<sup>th</sup>  
of March, 2015

Respectfully Submitted  
Jonathan M Campbell

Sorathan M. Campbell #236007.  
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