

RECEIVED

Kevin W. McDaniels  
Reg#14256-171  
Federal Correctional Institution  
Post Office Box 1000  
Otisville, N.Y. 10963

MAY 04 2016

S.C. SUPREME COURT

April 29, 2016

RE: Factually Innocent/Mentally Tortured Over Ten Years-have  
proven "Ineffective Assistance of Counsel""Due Process Violation"  
Malicious Prosecution" Miscarriage of Justice.

Case No: \_\_\_\_\_

TO: S.C. Supreme Court  
Clerk of Court  
PO Box 10139  
Columbia S.C. 29211

Please find the enclosed, WRIT OF CERTIORARI,

in which I have continuously presented "NEWLY DISCOVERED" evidence, Alibi Witness Affidavits/Depositions from the FBI/ATF/ SECRET SERVICE, declaring under penalty of perjury that Kevin Wayne McDaniels was in florida on 12/27/05 & 1/14/2006, Factually Innocent. I filed original PCR#2009-CP-42-3350-on 6/16/2009- denied by Judge Derham Cole & State of S.C. Atty General because of me being in federal custody, told I must wait until 9/11/2020- when I am back in state custody [to serve factually Innocent case], then I can file another PCR, filed letters to S.C. Court of Appeals/S.C. Supreme Court-only to be ignored- Filed Numerous Pleadings to U.S. District Court/U.S. Court of Appeals/U.S. Supreme Court- "ONLY TO BE CHARGED FILING FEES AND TOLD" FAILURE TO EXHAUST STATE REMEDIES..If JUDGE Derham Cole & State of South Carolina is not allowing me to exhaust state remedies, then There has been a Miscarriage of Justice. see, State v. McKennedy, 348 S.C. 270, 559 S.E. 2d 850(S.C. 2002). Lewis v. Casey, 116 S.Ct. 2174(1996) (Kevin McDaniels has shown actual Injury from Judge Derham Cole & State of South Carolina denying him access to the courts, McDaniels lives on a breathing machine, most of his family has died on him, both parents are disabled, fathers leg amputated, mother has plates in legs from falling etc.

pg 1 of 2

Finally on January 11, 2016, an Evidentiary Hearing was held in spartanburg South Carolina[PCR#2014-CP-42-0506],while McDaniels Was on teleconference here in New York[this should have occurred in McDaniels Original PCR# 2009-CP-42-3350-filed 6/16/2009],during this Evidentiary hearing, Judge "Ralph Cothran presided" Atty for McDaniels "Brandt Rucker-tel#864)271-9925""Robert Hall-esq in McDaniels original Trial"S.C. Atty Gen. Alicia Olive",during this hearing Robert Hall Admitted he did not pursue a One Hour Continuance on August 26, 2008-day of trial, Counsel knowing McDaniels Alibi witnesses were broke down in woodruff, S.C. 10 minuted from the courtroom-HE ADMITTED THIS 1/11/2016-which because of Robert Hall's Ineffectivè, McDaniels has been held false Imprisonment, and the fact that Judge Derham Cole denied McDaniels ACCESS TO THE COURTS since 2009.And Judge Ralph Cothran-tel#(803)435-2450-denied the PCR in april 2016, abusing his discretion, and jointly conspiring with the S.C. Atty Generals Office to defraud the Courts, and defraud the Public, holding a factually Innocent man falsely Imprisoned.If McDaniels was given ACCESS TO THE COURTS in original PCR#2009-CP-42-3350-filed June 16, 2009-he could have presented all 16 alibi witnesses who were with him in Florida, and had the FBI/ATF/SECRET SERVICE/ U.S. Marshals testify that McDaniels was in florida, this comes down to: Ineffective Assisatnce of Counsel[Robert Hall],prior before trial August 26, 2008 and during trial[McDaniels had to enter an ALFORD PLEA because Counsel Abandoned him day of trial 8/26/2008],then McDaniels files PCR# 2009-CP-42-3350-on June 16, 2009,-denied because of McDaniels being in federal custody. This has been presented to Federal Judges, and they still allow the fundamental Miscarriage of Justice to occur.

How can any Judge or prosecutor call himself a Religious man and allow a Factually Innocent man and his family to suffer over ten years, of being mentally and physically tortured by the state of south Carolina and not Intervene, I ask that you act upon the attached Motion, granting Relief.

I declare under penalty of perjury: April 28 2016.

  
Kevin McDaniels

Page 2 of 2

FACILITY Defendant  
Mentally Tortured over 10 Years!

SOUTH CAROLINA SUPREME COURT

Case No: \_\_\_\_\_

KEVIN WAYNE MCDANIEL:S

-vs-

STATE OF SOUTH CAROLINA

ON APPEAL FROM SPARTANBURG COUNTY COURT OF COMMON PLEAS

PCR Case No: 2014-CP-42-0506

**RECEIVED**

MAY 04 2016

S.C. SUPREME COURT

**WRIT OF CERTIORARI**

MAY IT PLEASE THIS COURT, Kevin McDaniels, hereby moves this court to Grant this Motion based upon the below listed fact and supporting Case Law.

Mr. McDaniels has been falsely Imprisoned since 5/11/2006, he has filed numerous pleadings arguing "Ineffective Assistance of Counsel""Due Process Violations""factually Innocent", in which Mr. McDaniels has been Denied Access to the courts, Denied Sixth Amendment Right to Counsel, and a Fundamental Miscarriage of Justice has occurred. Mr. McDaniels has been wrongfully convicted of Sptg.Co. Burglary Charges:Case Numbers: 2008-GS-42-1743,1744,1745,1746. McDaniels filed three PCR's 2009-CP-42-3350 (filed June 16, 2009) - 2010-CP-42-2188 Judge Derham Cole Denied because of me being in federal custody. I file several pleadings in federal Court [See Attached Docket], McDaniels files another PCR Feb 10, 2015, # 2014-CP-42-0506, and finally on January 11, 2016 he receives a Evidentiary Hearing [McDaniels on teleconference here in N.Y-while court held in sptg], Atty Robert Hall Admits he was Ineffective which has caused Kevin McDaniels to be held False Imprisonment, McDaniels has been mentally and physically tortured by Judges/ Prosecutors/Attys., **A FACTUALLY INNOCENT MAN WHO HAS PRESENTED CONSTITUTIONAL VIOLATIONS ONLY TO BE IGNORED.**

QUESTIONS FOR REVIEW

1. Did the Lower Court [Derham Cole], abuse his discretion by denying McDaniels Original PCR#2009-CP-42-3350-filed June 16, 2009, stating because McDaniels is in federal custody he must wait until September 11, 2020-then he could file another PCR, when he is back in state custody-to serve a Factually Innocent case, criminal No: 2008-GS-42-1743,1744,1745, 1746, this instant case on appeal ?
2. Did the S.C. Court of Appeals/S.C. Supreme Court/U.S. District Court/U.S. Court of Appeals/U.S. Supreme Court abuse their discretion by not Intervening on the Due Process violations of McDaniels not being allowed ACCESS TO THE COURTS Until September 11, 2016, a complete Miscarriage of Justice ?
3. Did the Court error in Charging McDaniels all these filing fee's and dismissing his case, even after he has presented "NEWLY DISCOVERED EVIDENCE" of 16 alibi witness affidavits and photographs of Kevin McDaniels in florida on 12/27/09 & 1/14/06- also the FBI/ATF/U.S. MARSHALS/SECRET SERVICE, providing written Depositions, stating we have McDaniels on VIDEO SURVEILLANCE IN FLORIDA, Factually Innocent, and still get denied ACCESS TO THE COURTS, Did the Courts commit a complete Miscarriage of Justice ??
4. Did the Lower Court commit a Miscarriage of Justice [Judge Ralph Cothran], by denying McDaniels PCR#2014-CP-42-0506- on April 2016, even after a Evidentiary Hearing was held on January 11, 2016, and Atty "Robert Hall" admitted he did not move for a One Hour continuance as requested by client McDaniels, to allow McDaniels alibi witnesses to appear and testify [they broke down in woodruff S.C.-10 minutes from the courtromm-called McDaniels Mother-who came upstairs and told Atty Robert Hall"and he ADMITTED ON JANUARY 11, 2016 that he was told but failed to pursue a One Hour Continuance, Did Judge Ralph Cothran/Derham Cole abuse their discretion ?

5. Did the Court error in not finding "Robert Hall" Ineffective ?
6. Did the Court abuse their discretion by not finding a Constitutional Violation, such as "Due Process Violations"" Ineffective Assistance of Counsel""Malicious Prosecution"" Factually Innocent ?
7. Did the Court error once it was informed that Governor Nikki Haley/Derham Cole/Prosecutor Barry Barnette/Atty Robert Hall/Atty Leah Moody/Atty Kevin Owen?Atty Brandt Rucker/S.C. Atty General Alan Wilson/Spartanburg Sheriff Chuck Wright had joined in on a Civil Conspiracy, to perpetrate a Fraud upon the Court to keep McDaniels "Falsely Imprisoned" even after McDaniels presented "Newly Discovered Evidence" of alibi witness[16 alibi witnesses], who were with McDaniels in florida on December 27, 2005 & January 14, 2006, and also McDaniels had the FBI/ATF/U.S. MARSHALS/SECRET SERVICE present Written Depositions, stating McDaniels was in florida, having Surveillance of McDaniels in florida, did the court abuse their discretion in not pursuing additional fact finding information and exhibits by the Federal Government proving Kevin McDaniels was in florida not South Carolina ?

#### SUPPORTING FACTS

#### DENIED ACCESS TO THE COURTS.

Kevin McDaniels is entitled to submit non-frivolous filings to the Courts, NO COURT in any way limit a Litigant's ACCESS TO THE COURTS Period, such as in this Case "Judge Derham Cole in 2009[PCR#2009-CP-42-3350-filed June 16,2009],and The South Carolina Atty general denying McDaniels ACCESS TO THE COURTS because McDaniels being in federal custody,and then on 1/11/2016, McDaniels is given a TELECONFERENCE[Evidentiary hearing-PCR#2014-CP-42-0506-Atty Robert Hall admits Ineffective when failing to pursue a One Hour Continuance on 8/26/2008.

This is addressed to the S.C. Court of Appeals/S.C. Supreme Court, only to be ignored. The Courts and Judge Derham Cole hindered McDaniels access to the courts to present several State and Federal Constitutional Violations such as: INEFFECTIVE ASSISTANCE OF COUNSEL BY Robert Hall on day of Trial August 26, 2008-completely abandoned McDaniels in the courtroom, MCDANIELS HIMSELF ENTERING AN ALFORD PLEA MAKING SURE TO MAINTAIN HIS INNOCENCE...DUE PROCESS VIOLATION BY JUDGE DERHAM COLE AND THE S.C. ATTY GENERAL NOT ALLOWING MCDANIELS IN THE COURTS.see, Lewis v. Casey, 116 S.Ct. 2174(1996);Ex Parte Hull, 312 U.S. 546, 549,61 S.Ct. 640,85 L.Ed. 1034(1941). How can any judge or Prosecutor tell a Pro-Be litigant that he cannot file an appeal until 9/11/2020-because he is in federal custody[Serving state & Federal Concurrent sentence-state sentence-Factually Innocent],and then finally on January 11, 2016-Kevin McDaniels finally gets an Evidentiary hearing WITH KEVIN MCDANIELS ON TELECONFERENCE HERE IN NEW YORK WHILE COURT HELD IN SPARTANBURG. This should have been done in 2009, and the only witness McDaniels could produce is his loving mother who stood before the court on August 26, 2008 and January 11, 2016, pleading-informing the Courts her son Kevin McDaniels was in florida,and on 1/11/2006-she stood before the court with plates and screws in both legs from falling and breaking them,pleading for her son to be able to come home and take care of her and step father who recently had his leg amputated because of diabetes, only to have Judge "Ralph Cothran" deny McDaniels PCR, because McDaniels has been denied ACCESS TO THE COURTS by Judge Derham Cole and The S.C. Atty Generals Office since 2009-that issue needs to be ruled on the DUE PROCESS VIOLATION. Mr. McDaniels has been Wrongfully convicted and Mentally and Physically tortured since March 11, 2006, over ten years of family members dying,pure menatl torture.

Mr. McDaniels filed Numerous pleadings reaching out to the State Courts/Only to be ignored, he files pleadings in the Federal Courts only to be charges thousands of dollars in filing fees and case dismissed for failure to exhaust state remedies. ONCE AGAIN, IF JUDGE DERHAM COLE AND THE S.C. ATTY GENERALS OFFICE HAS DENIED ME ACCESS TO THE COURTS SINCE 2009- a FACTUALLY INNOCENT MAN, then the State of South Carolina and Judge Derham Cole shall be held accountable for McDaniels **Malicious Prosecution and false Imprisonment.**

The Court's state that one must prove INNOCENCE, before he can file a Civil Action, BUT IF THE STATE AND JUDGE COLE REFUSES TO ALLOW MCDANIELS TO EXHABIST STATE REMEDIES THEN WHAT CHOICE DOES A PROSE LITIGANT HAVE. Only choice is to address it to the courts, McDaniels has and over ten years later still being mentally tortured, putting McDaniels through this is unfair, the Prosecutor and Judge Derham Cole knowing McDaniels was in florida, they have received evidence, photographs, from government agents such as FBI/ATF./U.S. MARSHALS/SECRET SERVICE stating that Kevin McDaniels was in florida from August 20, 2005 thru January 20, 2006 when the two burglaries were committed in sputh carolina on 9/27/05 & 1/14/06-Factually Innocent.

MISCARRIAGE OF JUSTICE By State & Federal Judges and Attorney Generals Office.

Mr. McDaniels asserts that the Judges and Atty Generals Office failing to consider McDaniels claims in 2009 resulted in a MISCARRIAGE OF JUSTICE., see, McCarver v. Lee, 221 F.3d 583,588(4th Cir. 2000);Kevin Wayne McDaniels is factually Innocent, Evidence was presented in April 2006 a month after arrest, then day of trial, Counsel Ineffective, alibi witness drive 10 hours break down 10 minutes from courtroom, Atty "Robert Hall" is notified-still fails to pursue continuance

Mr. McDaniels has established cause and prejudice by judge derham Cole/S.C. Atty General/Judge Ralph Cothran/Prosecutor Barry Barnette/U.S. District Judge-Shiva Hodges/Kevin McDonald/Terry Wooten/. There is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different, see, Sawyer v. Whitley, 505 U.S. 333, 348, 112 S.Ct. 2514, 120 L.Ed 2d 269(1992). A fundamental "Miscarriage of Justice has occurred in this instant case, based upon a conviction of one [Kevin McDaniels], who is factually innocent, who has presented overwhelming evidence of him being in florida, only to have Judge Cole not allow him in the courts, then on January 11, 2016, an Evidentiary Hearing was held, how can McDaniels SIX YEARS LATER all of a sudden have his alibi witnessess appear to testify- some have died of cancer, some have moved, in which McDaniels filed ALIBI WITNESS NOTICE TO JUDGE RALPH COTHRAN , Directing Atty "Brandt Rucker" to have the FBI/ATF/ SECRET SERVICE/ U.S. Marshals appear on January 11, 2016-day of Evidentiary hearing-ONLY TO BE TOLD NO BY ATTY BRANDT RUCKER""prior before that Brandt Rucker told McDaniels, to withdraw his PCR and Do the time. Kevin Wayne McDaniels has demonstrated "ACTUAL FACTUAL INNOCENCE of the offense itself; i.s that Kevin Wayne McDaniels was in florida on 12/27/2005 & 1/14/06- see, United States v. Mikalajunas, 186 F.3d 490, 494(4th Cir. 1999). Based Upon the above and exhibits before the court, McDaniels moves the court to grant the below relief.

RELIEF REQUESTED

Kevin McDaniels moves this Court to act on the constitutional violations; AN ORDER MR. MCDANIELS BE IMMEDIATELY RELEASED, HE HAS BEEN MENTALLY TORTURED OVER TEN YEARS, A FACTUALLY INNOCENT MAN.

I declare under penalty of perjury: April 29 2016.

  
Kevin McDaniels

MENTALLY & PHYSICALLY TORTURED  
OVER TEN YEARS. SINCE MARCH 11, 2006

SOUTH CAROLINA SUPREME COURT

RECEIVED

KEVIN WAYNE MCDANIELS

MAY 04 2016

vs.

STATE OF SOUTH CAROLINA

ON APPEAL FROM SPARTANBURG COUNTY COURT OF COMMON PLEAS S.C. SUPREME COURT

PCR CASE NO: 2014-CP-42-0506

---

\* MOTION TO CORRECT A CLEAR ERROR OF LAW AND \*  
PREVENT MANIFEST INJUSTICE

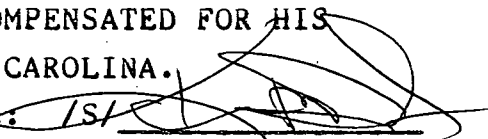
---

MAY IT PLEASE THIS COURT, Mr. Kevin Wayne McDaniels hereby moves this Court to GRANT This Motion to Correct a Clear Error of Law and Prevent Injustice, in which McDaniels has continuously shown he is factually Innocent of the offense of conviction and shown Constitutional Violations, Judge Derham Cole & State of South Carolina denying ACCESS TO THE COURTS in PCR#2009-CP-42-3350- filed June 16, 2009/Sixth Amendment violation by "Robert Hall" he admitted in PCR Evidentiary hearing[PCR#2014-CP-42-0506], on January 11, 2016, THAT HE DID NOT ASK FOR A ONE HOUR CONTINUANCE DAY OF TRIAL August 26, 2008-knowing McDaniels alibi witnesses drove 10 straight hours from Fla-to Sptg. to testify that McDaniels was in Florida not S.C. on 12/27/05 & 1/14/06-Factually Innocent. See, Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403,407(4th Cir. 2010). McDaniels points to:Judge derham Cole denying McDaniels ACCESS TO THE COURTS since 2009- because he is in Federal custody telling McDaniels he must wait until 9/11/2020 until he can file another PCR, the Due Process violation is what McDaniels points directly to, the Manifest Injustice by Judge Derham Cole and the S.C. Atty Generals Office.

In this case, Mr. McDaniels has presented 16 Alibi witness Affidavits from family members who were with McDaniels in florida on 12/27/05 & 1/14/2006, and Depositions by FBI/ATF/SECRET SERVICE/U.S. Marshals, stating Kevin W. McDaniels was in florida on above dates, still McDaniels being mentally & Physically tortured. On January 11, 2016 Robert Hall Admits he was Ineffective and PCR Judge Ralph Cothran[tel#803)435-2450], denies the PCR, a Complete Miscarriage of Justice, If McDaniels original PCR was able to be heard in 2009 All 16 Alibi witnesses, the FBI/ATF/ Secret Service/U.S. Marshals would have been able to testify and provide actual footage of Kevin McDaniels in florida out on Bail from South Carolina, poss of firearm charge, fleeing to floirda, the Federal Government has VIDEO SURVEILLANCE OF Kevin Mcdaniels in florida, McDaniels has proven Ineffective Assistance of Counsel/Denied Access to the courts. Provided "NEWLY DISCOVERED EVIDENCE" only to be mentally and physically tortured since March 11, 2006.see, Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co. 148 F.3d 396,403(4th Cir. 1988),there has been a Clear Manifest Injustice. Miscarriage of Justice, Fraud upon the court by Judges/Prosecutors and Attorneys, McDaniels moves this court to grant the below listed relief.

RELIEF REQUESTED

WHEREFORE, Kevin W. McDaniels moves this Court to CORRECT A CLEAR ERROR OF LAW AND PREVENT MANIFEST INJUSTICE, BY ORDERING KEVIN WAYNE MCDANIELS BE IMMEDIATELY RELEASED FROM STATE CUSTODY AND FOR THE CRIMINAL CHARGES & CONVICTION IN SPARTANBURG SOUTH CAROLINA-Court of General Sessions case # 2008-GS-42-1743,1744,1745,1746, McDaniels has shown several constitutional violations, he is entitled to IMMEDIATELY RELEASE AND BE COMPENSATED FOR HIS FALSE IMPRISONMENT BY THE STATE OF SOUTH CAROLINA.

I declare under perjury the above is true. 

Prayed for on this 29 day of April 2016.

Kevin W. McDaniels

April 29, 2016  
2



Exhibit A: Other Federal Actions

1. *McDaniels v. United States*, 16 Civ. 408 (D.S.C.)
2. *McDaniels v. Baltazar*, 15 Civ. 6486 (S.D.N.Y.)
3. *McDaniels v. Baltazar*, 15 Civ. 5756 (S.D.N.Y.)
4. *McDaniels v. South Carolina*, 15 Civ. 4948 (D.S.C.)
5. *McDaniels v. South Carolina*, 15 Civ. 4905 (D.S.C.)
6. *McDaniels v. United States*, 15 Civ. 2671 (D.S.C.)
7. *McDaniels v. Goff*, 14 Civ. 124 (D. Utah)
8. *McDaniels v. Hufford*, 14 Civ. 6471 (S.D.N.Y.)
9. *McDaniels v. Hodges*, 14 Civ. 4636 (D.S.C.)
10. *McDaniels v. South Carolina*, 14 Civ. 4197 (D.S.C.), *petition for mandamus denied*, *In re* *McDaniels*, 608 F. App'x 155 (4th Cir. 2015)
11. *McDaniels v. Wright*, 14 Civ. 3728 (D.S.C.)
12. *McDaniels v. Spartanburg Cnty. Sheriffs Dep't*, 14 Civ. 2220 (D.S.C.)
13. *McDaniels v. Hufford*, 14 Civ. 1023 (D.S.C.)
14. *McDaniels v. United States*, 14 Civ. 646 (D.S.C.)
15. *McDaniels v. Hufford*, 13 Civ. 8100 (S.D.N.Y.)
16. *McDaniels v. South Carolina*, 12 Civ. 975 (D.S.C.), *appeal dismissed*, 479 F. App'x 511 (4th Cir. 2012)
17. *McDaniels v. Owen*, 12 Civ. 642 (D.S.C.), *appeal dismissed*, 505 F. App'x 269 (4th Cir. 2013), *cert. denied*, 134 S. Ct. 424 (2013)
18. *McDaniels v. Richland Cnty. Pub. Defenders Office*, 12 Civ. 6 (D.S.C.)
19. *McDaniels v. United States*, 11 Civ. 3128 (D.S.C.)
20. *McDaniels v. United States*, 10 Civ. 70201 (D.S.C.), *appeal dismissed*, 437 F. App'x 264 (4th Cir. 2011)
21. *McDaniels v. South Carolina Dep't of Corr.*, 09 Civ. 1732 (D.S.C.)
22. *McDaniels v. United States*, 08 Civ. 70005 (D.S.C.)
23. *McDaniels v. United States*, 07 Civ. 3386 (D.S.C.), *judgment aff'd*, 329 F. App'x 443 (4th Cir. 2009)
24. *McDaniels v. Powers*, 01 Civ. 3472 (D.S.C.)
25. *McDaniels v. Jones*, 00 Civ. 899 (M.D. Fla.)

As previously noted, at least two of Plaintiff's cases included claims premised on the treatment of his nasal condition, both of which were resolved against Plaintiff. (*See* Dkt. No. 84, at 3-4.)



NAME KEVIN J. W. JANDREWS  
REGISTER NO. 148560171  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. BOX 1000  
OTISVILLE, NY 10963

LEGAL MAIL

⇄ 14256-171 ⇄

Sc Supreme Court  
Factually Innocent  
PO BOX 12159  
Columbia, SC 29211  
United States



FEDERAL CORRECTIONAL INSTITUTION  
OTISVILLE, NY 10963

DATE:

4-29-16

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question of problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer enclosed correspondence for forwarding to another addressee, please return the enclosure to the address above.