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JUN 15 2018

**S.C. SUPREME COURT**

State of South Carolina  
In the Supreme Court

Appeal from Colleton County  
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Appellate Case no: 2017-001915

Lower Court Case no: 2013-CP-13-0214

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Review of Order dated  
May 30, 2018 under Rule 224  
(J), SCACR

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6-12-18

1/2 Walter McCreone

K.C.I.

PB-27

Christian A. Swille, Esq.

PCB Division

P.O. Box 11549

Columbia S.C. 29211

4848 Goldmine H.W.Y

Keeshaw S.C. 29067

Review of Order dated  
May 30, 2018 under Rule  
2.14(d), SCACR

Petitioner, Walter McOne, 20082 Motion request Leave to  
Make motion to set aside order or Judgment under Rule 60  
(b)(3), SCACR was denied. see (Exhibit 1)

This motion is to review order dated May 30, 2018 should  
be reverse for the following reason: The Honorable, Perry M. Buck-  
ner III Committed Extrinsic Fraud upon me and fraud upon the Court  
when he intentionally Concealed an intentional Perversion of truth  
in his filed Sep. 8, 2017 final Order of Dismissal alleging: On  
June 2, 2017 this Court held a hearing to determine whether  
applicant opposition to his COV was timely file and meritorious.  
this Court appointed Paul Matnew, Esquire to represent appli-  
cant. see (Page 3 Exhibit 2). On September 29, 2017 the South  
Caroline Court administration provided me the Court Calendar  
for the 14th Judicial Circuit for the Month of June 2, 2017. see  
(Exhibit 3). The Court Calendar showed no hearing held  
June 2, 2017. Abuse Counsel, officer of the Court, Paul  
Matnew, Esquires intentionally assumed authority at the  
June 2, 2017 Rule 60(b)(3), SCACR, hearing to rehear  
the April 21, 2017 file final Order of Dismissal an intent-  
ionally Committed to my defeat at the August 8, 2017 hearing  
in re: Objection by applicant, when he intentionally raise  
an issue that had been allege in PCB 2004-CP-15-1002.

see (Exhibit Page 9, line 5-17) forcing me not to Present the merits of the filed April 16, 2016 Objections to Conditional Order of Dismissal. see (Exhibit c, Page 15-16, line 23-25, line 1-19) (Exhibit E, Page 41, line 24-25 - page 42, line 1-6) and deprive me of the full and fair opportunity to be heard on the merits of *Braman v State*, 548 SE 2d 866 (2001) 71.1(F)(g), SCRPC, violation (Exhibit Page 33, line 9-23) subverting the integrity of the South Carolina Supreme Court when he knew no hearing were held June 2, 2017 an alleged Counsel, officer of the Court, David Matnew, Esq. was not appointed to represent applicant and friend, officer of the Court, David Matnew, Esq. intentionally assume authority and connive to my defeat to deny me one full and fair opportunity to Present Claims in one MR application in violation of his Oath an unconscionable scheme which is design to improperly influence the Court in it decision

Through the exercise of due diligence Petitioner discovered the existence of the underlying fact on Sep 29, 2017

6-12-18

161 Walter McConne

10-5-CA1

28 U.S.C. 1746

# The Supreme Court of South Carolina

*Exhibit 4*

Walter J. McQune, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001915

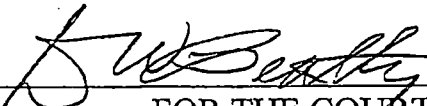
Lower Court Case No. 2013CP1500214

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## ORDER

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The motion for leave to make a motion under Rule 60 of the South Carolina Rules of Civil Procedure is denied.

  
\_\_\_\_\_  
FOR THE COURT C.J.

Columbia, South Carolina  
May 30, 2018

cc: Christian Aaron Saville, Esquire  
Mr. Walter J. McQune, 299882  
The Honorable Patricia Grant

The Court later learned, after signing the Final Order of Dismissal that the COD was not received by the Attorney General's office until March 1, 2016, and the Applicant was not personally served the COD until March 24, 2016. On April 4, 2016, Applicant mailed objections to the COD to the Colleton County Clerk of Court, challenging this Court's assertion that Applicant did not file objections within 20 days of service.

*Exhibit 2*

~~On June 2, 2017, this Court held a hearing to determine whether Applicant's opposition to his COD was timely filed and meritorious. This Court appointed David Mathews, Esquire, to represent Applicant. On June 7, 2017, By Applicant's motion, this hearing was continued. On August 8, 2017, this Court held a hearing to determine whether Applicant's objections to his COD were timely filed or meritorious. This Court took the testimony of Applicant and heard legal arguments from both parties.~~  
This Court finds Applicant has failed to show why this application should not be summarily dismissed for the following reasons:

#3  
PMB

**II. DISCUSSION**

**A. Timeliness of Applicant's filing**

The State asserted Applicant's PCR filing on April 16, 2016 was untimely per S.C. Code Ann. § 17-27-45. "It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer. The mailing of petitioner's application was therefore not sufficient under § 17-27-45(A)." *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) (citations omitted). However, the State did not request a dismissal based on a lack of timely filing because the State received Applicant's objections five days before the twenty day requirement. Applicant's objections to this Court's COD were mailed to the Colleton County Clerk of Court on April 4, 2016, twelve days after the COD was served on him by the State on March 24, 2016. The mailing date of April 4, 2016, is clear from the postmark on

South Carolina Court Administration  
1015 Sumter Street, Suite 200  
Columbia, South Carolina 29201-3739

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Mr. Walter McQune, # 299882  
G.C.I., B-5 40B  
4556 Broad River Road  
Columbia, South Carolina 29210

29210-409593

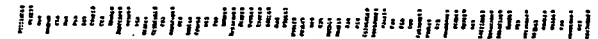
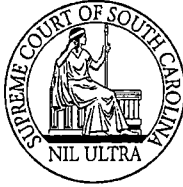


Exhibit 3.



*Exhibit 3*

**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

TONNYA K. KOHN  
INTERIM DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1355

September 25, 2017

Mr. Walter McQune, # 299882  
G.C.I., B-5 40B  
4556 Broad River Road  
Columbia, South Carolina 29210

Re: Your correspondence received September 22, 2017

Dear Mr. McQune:

As requested, we have enclosed a copy of the court calendar for the 14<sup>th</sup> Judicial Circuit for the month of June 2017. Additionally, enclosed is a copy of the Supreme Court's Order concerning the cost for copies and mailing. Please be advised that should you request additional documents, you will be charged per the enclosed Order.

All terms of court dating back to 2002 are available on our public website at <http://www.sccourts.org/calendar/scmapping.cfm>, and may be downloaded and printed free of charge. If you are not able to access the internet, you may wish to have a friend or family member do so on your behalf.

Sincerely,

Staff Attorney Section/tr

Enclosures

*Exhibit 3*

Circuit Number	6/5/2017	6/12/2017	6/19/2017	6/26/2017
<p>14</p> <p>Common Pleas Non-Jury/PCR 5, 6 Goodstein, Diane <u>HAFFENDEN</u> 5, 6</p> <p>Common Pleas/Common Pleas Nonjury Beaufort Goldsmith, Brooks <u>ROWE</u> 5, 6, 7 <u>NO CR NEEDED</u> 8, 9</p> <p>General Sessions Non-Jury McIntosh, R. <u>MANLEY</u></p> <p>Common Pleas/Common Pleas Nonjury Hampton Buckner, Perry <u>NO CR NEEDED</u></p> <p>Common Pleas Non-Jury 5 Toal, Jean</p> <p>Common Pleas Non-Jury/General Sessions Non-Jury 7 Buckner, Perry <u>YOUNG</u> 7</p> <p>Common Pleas Non-Jury/PCR 9 Goodstein, Diane <u>HAFFENDEN</u> 9</p>	<p>Common Pleas/Common Pleas Nonjury Colleton McIntosh, R.</p> <p><u>ROWE</u> 12 am <u>NO CR NEEDED</u> 13, 14, 15, 16</p> <p>General Sessions Hampton Buckner, Perry</p> <p><u>HILL</u> 12, 13, 14, 15 <u>NO CR NEEDED</u> 16</p> <p>Common Pleas/Common Pleas Nonjury Jasper Mullen, Carmen <u>MANLEY</u></p>	<p>Common Pleas/Common Pleas Nonjury Beaufort Goldsmith, Brooks</p> <p><u>MANLEY</u> 19, 20, 21, 22 am <u>NO CR NEEDED</u> 23</p> <p>Common Pleas Non-Jury McIntosh, R.</p> <p><u>ANDERSEN</u> 19 am, 20 am <u>ANDERSEN</u> 21, 22 <u>NO CR NEEDED</u> 23</p> <p>Common Pleas/Common Pleas Nonjury Colleton Buckner, Perry</p> <p><u>HILL</u> 19, 20 am <u>HILL</u> 21 am, 22 am <u>NO CR NEEDED</u> 23</p> <p>General Sessions Non-Jury Mullen, Carmen</p> <p><u>MANLEY</u> 19 am <u>NO CR NEEDED</u> 20 <u>HILL</u> 21, 22 pm <u>MANLEY</u> 23</p>	<p>General Sessions Colleton Buckner, Perry <u>HILL</u> 26, 27, 28, 29 <u>NO CR NEEDED</u> 30</p> <p>General Sessions Beaufort Mullen, Carmen <u>ROWE</u></p> <p>General Sessions Beaufort Brown, D. <u>MANLEY</u> 26 <u>NO CR NEEDED</u> 27, 28, 29, 30</p>	
	<p>Family Court Beaufort Smoak, Gerald C.</p>	<p>Family Court Allendale / Beaufort Fuge, Peter L.</p>	<p>Family Court Colleton Creech, Wayne M.</p>	<p>Family Court 26 Beaufort</p>

Exhibit 3

<u>HARTLEY</u> 5, 6 <u>HAFENDEN</u> 7 <u>HARTLEY</u> 8, 9  Family Court Colleton Malphrus, Deborah A.  <u>BROWN</u> 5, 6 <u>HILL</u> 7 <u>LANDRY</u> 8 <u>ROWE</u> 9	<u>HARTLEY</u>  Family Court Beaufort Malphrus, Deborah A.  <u>BROWN</u> 12, 13, 14 am <u>BROWN</u> 15, 16 am	<u>TAYLOR</u> 19 am, 20 <u>TAYLOR</u> 21 pm, 22, 23 am  Family Court Beaufort Fuge, Peter L.  <u>HARTLEY</u>  Family Court Jasper Seigler, W. Greg  <u>BROWN</u> 19, 20 am <u>BROWN</u> 21 am, 22 am <u>BROWN</u> 23 am  Family Court Hampton Tiffany, Katherine H.  <u>YOUNG</u> 19, 20, 21, 22 <u>NO CR NEEDED</u> 23	Fuge, Peter L.  <u>HARTLEY</u> 26  Family Court Beaufort Malphrus, Deborah A.  <u>BROWN</u> 26, 27, 28 am <u>NO CR NEEDED</u> 29 <u>BROWN</u> 30 am  Family Court Allendale / Beaufort McGee, Randall E.  <u>NO CR NEEDED</u> 26, 27 <u>TAYLOR</u> 28, 29, 30 am  Family Court 29, 30 Beaufort Fuge, Peter L.  <u>HARTLEY</u> 29, 30
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1 of people's mercy. I think the Attorney General's Office would  
2 agree that he substantially complied and that justice requires  
3 that his objections be considered, and we would only ask that  
4 the Court consider Mr. McQune's objections ---

5 THE COURT: Mr. Mathews, we are past that now. I'm ready  
6 to hear from you on his objections. That's the purpose of us  
7 having scheduled this hearing. You have the burden of proof.  
8 Move forward.

9 MR. MATHEWS: Thank you, Your Honor. Your Honor, the crux  
10 of his argument is that he was not competent at the time of his  
11 PCR hearing and there are findings in the record to that effect.  
12 He got a Blair hearing at his first PCR and in that he was found  
13 incompetent -- well, not found incompetent, but the doctor says  
14 he was incompetent. And yet somehow a consent Order with his  
15 signature on it was presented to give up his right to go forward  
16 with a PCR application. So, he didn't get a fair bite at the  
17 apple.

18 THE COURT: Are you going to call Mr. McQune as a witness?

19 MR. MATHEWS: Your Honor, like I said, I've gone back and  
20 forth trying to figure out exactly where we were when this was  
21 to set aside the final hearing and have the objections  
22 considered or whether we were ready to go forward with an  
23 evidentiary hearing. I wasn't clear exactly where we are. I  
24 talked some to Mr. Neely and I think he thought we were even  
25 earlier in the process than I thought we were. So in terms of

1 guilty and would have insisted on going to trial to challenge  
2 the charges grounded on the involuntary confession in violation  
3 of the Sixth Amendment made applicable to the State by way of  
4 the Fourteenth Amendment; due process violation. South Carolina  
5 Constitution Article I, Section III, Fourteenth Amendment. I  
6 didn't want to challenge this issue right here that he's trying  
7 to get me to challenge on the record.

8 VOIR DIRE EXAMINATION BY THE COURT

9 THE COURT: Now, when you say "he", you're referring to Mr.  
10 Mathews?

11 MR. MCQUNE: My counsel, yes.

12 THE COURT: So in other words, the issue that Mr. Mathews  
13 has raised with you is not the issue that you would have  
14 preferred to have put in your amended application, but there is  
15 no amended application raised in that issue before the Court at  
16 this time; is that right?

17 MR. MCQUNE: I wanted to amend the application.

18 THE COURT: I understand that you wanted to, but there is  
19 no amended application on that ground at this time; is that  
20 correct?

21 MR. MCQUNE: Yes, sir.

22 THE COURT: Okay, David, ask a question.

23 Q Please tell the Court why you did not feel that you got a  
24 fair hearing at either - at the PCR level, your first PCR, why  
25 you did not get a fair bite at the apple the first time?

1 A The Honorable Carmen T. Mullen, she erred on August 8th,  
2 2007, when she did not conduct an evidentiary hearing with me to  
3 establish a complete record to ascertain whether PCR 2004-CP-15-  
4 1002 was knowingly, voluntarily, and intelligently deemed with  
5 prejudice.

6 THE COURT: Slow down a little bit, Mr. McQune, I'm trying  
7 to follow you. Start over again as to why you felt like you  
8 didn't get a fair hearing at the PCR hearing?

9 MR. MCQUNE: Because the Honorable Carmen T. Mullen erred  
10 on August 8th, 2007.

11 THE COURT: You're talking about Judge Mullen?

12 MR. MCQUNE: Yes, sir.

13 THE COURT: What about Judge Mullen?

14 MR. MCQUNE: She did not conduct an evidentiary hearing to  
15 ascertain whether PCR 2004-CP-15-1002 was knowingly, voluntarily  
16 and intelligently waived under statutory and constitutional  
17 rights with prejudice under Brannon v. State 548, S.E.2d, 866,  
18 decided in 2001, in violation of Rule 71.1F, South Carolina  
19 Rules of Civil Procedure.

20 MR. MATHEWS: Your Honor, if I might interject, this has  
21 sort of been an ongoing problem. Mr. McQune knows a lot of ---

22 THE COURT: I'm going to give you a chance to argue at the  
23 end, but right now before you start making a closing argument,  
24 this is a witness on the witness stand who is subject to cross-  
25 examination. So please proceed and let me hear it all and

1 MR. NEELY: That's correct, Your Honor. (140)

2 THE COURT: All right. Now, therefore, 20 days from March  
3 24th, 2016, would include within the time of April 4th when he  
4 placed it in the mail?

5 MR. NEELY: That's correct, Your Honor.

6 THE COURT: Even though it had not been filed by the Clerk  
7 of Court of Colleton County at that point?

8 MR. NEELY: That's correct, Your Honor.

9 THE COURT: And so you say that even though there was more  
10 time utilized in the 20 days in my conditional Order, you think  
11 I should consider the objections that Mr. McQuine raised, his  
12 written objections, to the Conditional Order of Dismissal. That  
13 being that he was incompetent on November 23rd, 2005, and March  
14 2nd, 2006, and that Judge Mullen erred on August 8th, 2007, when  
15 she didn't conduct an evidentiary hearing to establish a record  
16 to ascertain whether or not his PCR application was knowingly  
17 and intelligently being withdrawn with prejudice. And that his  
18 incompetency prevented him from timely filing and that this,  
19 claim could not have been raised, he says, in 2004, because it  
20 was not in existence to be discovered and raised until the judge  
21 signed the consent Order of dismissal without issuing the final  
22 Order of judgment, all of which are set forth in his written  
23 objections: do you understand that?

24 MR. NEELY: Yes, sir, Your Honor. Each one of those  
25 objections was contained in his original application which had

1 will certainly listen to him because he wanted to move to amend.  
2 Talk to him and tell me if there is anything else you need to  
3 tell me, because I am ready to conclude. 148

4 MR. MATHEWS: Your Honor, Mr. McQune feels that it is very  
5 important that the Court carefully consider the procedural  
6 history that he has set forth in his many ---

7 THE COURT: In his objections to the Conditional Order of  
8 Dismissal?

9 MR. MATHEWS: Yes, Your Honor.

10 THE COURT: I've got it in front of me. All right, listen  
11 to me carefully. I'm going to give you both two weeks. I want  
12 proposed Orders from you by two weeks from today. Mr. Mathews  
13 thinks that I'm supposed to decide whether this is a full  
14 hearing or not; I disagree. I have to decide every issue that  
15 is in front of me. I'm going to tell you both right now that I

16 think Mr. McQune was entitled to a hearing today.

17 When I say a "hearing," Mr. McQune obviously wanted me to  
18 reach the merits, which you disagree on how I should treat them,  
19 Mr. Neely. Mr. Mathews even wants to raise matters today on  
20 behalf of Mr. McQune that were not raised in the original  
21 application. Therefore, Mr. McQune stands up in the middle of  
22 the hearing and asks me to continue the hearing so he can amend  
23 his application.

24 What is before me are Mr. McQune's objections to the  
25 Conditional Order of Dismissal and I believe Mr. McQune is

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1 entitled at the very least to a hearing today on that. Which  
2 may lead to the Court addressing the merits raised in the  
3 objections to the Conditional Order of Dismissal, which is why I  
4 asked Mr. Mathews to present his case when we began today so  
5 that I could understand completely the position of the  
6 applicant.

7 This is a strange procedural history in that I believe that  
8 both the Attorney General's office and Mr. McQune had gotten my  
9 Conditional Order of Dismissal, certainly in much less time than  
10 what they tell me in this hearing they received it.

11 Therefore, both of you will address in your Order's Mr.  
12 McQune's objections to the Conditional Order of Dismissal. You  
13 will have two weeks from today to send in the Order. You will  
14 send them to me at P.O. Drawer 470, Walterboro, 29488. You will  
15 copy opposing counsel on your transmittal of your proposed  
16 Orders. You will include a self-addressed, stamped envelope  
17 with sufficient postage affixed thereto.

18 The reason I'm doing that is because post conviction is a  
19 common pleas matter, and in common pleas, Mr. McQune, we have e-  
20 filing. However, post conviction is exempt from e-filing right  
21 now. Now, if you want to send me your Order by e-mail, you can  
22 do so. I will then consider, along with his objections to the  
23 Conditional Order of Dismissal, how I wish to rule in this  
24 matter. I wanted to get some idea today of what Mr. McQune --  
25 Mr. McQune, don't keep raising your hand. The hearing is over

There is no statute of Limitation when a Party seeks to set aside a Judgment due to fraud upon the Court. Channing v Ford Motor Co., 354 S.C. 42 (2003). An Act of Perjury or Concealment of a document coupled with an intentional scheme to defraud the Court justifies the setting aside of a Judgment due to extrinsic fraud. Tray & Tray, 374 S.C. 79 (2007). A Party does not have a Claim for relief from a Judgment on the basis of Extrinsic fraud if he failed to exercise due diligence in discovering the existence of facts or documents during the underlying Litigation. Praby Const. L.L.P. v. Orr, 358 S.C. 10 (2004). Fraud is an intentional Perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to that Person or to surrender a Legal right. 354 S.C. 648 (Ct. App. 2003). Standard Oil Company of California v. U.S., 429 U.S. 17 (1976). (That Oil Company, which sought to have Judgment set aside on the basis of alleged misconduct by government Counsel and by a material witness was not require to obtain Leave from the United States Supreme Court to ~~set aside~~ <sup>before</sup> filing motion in the district Court to set aside Judgment.) Although other motions to reopen Judgment based on fraud must file within a year of the Judgment or Order. Rule 60(b) allow a Party to seek relief from an Order for "fraud upon the Court".

after the expiration of one year, fraud upon the Court is a narrow and malicious species of fraud that is "subvert[ing] the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudication. Chewning v Ford Motor Co, 354 S.C. 72 (2003) Like other types of fraud, proving fraud upon the Court requires showing that the perpetrator acted with the intent to defraud for there is no such thing as accidental fraud. see Chewning, 357 S.C. at 78 (fraud upon the Court 'whatever else it encompasses, requires a showing that one has acted with an intent to deceive or defraud the Court [fraud is always positive intentional.] "Extrinsic fraud," which allows relief from a judgment due to fraud upon the Court, is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. 362 S.F.2d 176; 579 S.F.2d 605 (2003) In order to set aside a judgment or order because of fraud upon the Court under Rule providing for such relief, it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the Court in its decision. 46 F.R.D. 625 (1969) Pub. 2-101-650.

Conclusion

The Order of May 30, 2018 should be reverse and  
Leave should be granted to make Motion to set  
aside order or Judgment under Rule 60(b)(3)  
SCRPC.

6-12-18

/s/ Walter McDune  
W.C.I

PB 27

4848 Goldmine Lt. WY

Wenham SC 29067

cc Patricia C Grant

Christian B. Samko, Esq

Daniel Sparrowe, Clerk

State of South Carolina  
In the Supreme Court

Appeal from Colleton County  
Court of Common Pleas

Perry M. Pietsner, Circuit Court Judge  
Appellate Case no: 2017-001915  
Lower Court Case: 2013-CP-15-0214

Walter McAnnis 299882 . . . . . Prose Petitioner  
v

State of South Carolina . . . . . Respondent

Certificate of Service

I Certify that I have served "Reviews of Order dated May 30, 2018 under Rule 204(j), SCACR" upon all parties subject to this Appeal by depositing it in the U.S. mail Postage Pre-Paid address as follows: (1) Copy to Patricia C Grant, P.O. Box 620, Walterboro S.C. 29488; (1) Copy to Christian R. Sawille, Esq. P.O. Box 11549, Columbia S.C. 29211; (2) Copies to Daniel Shearouse, P.O. Box 11330, Columbia S.C. 29211

6-12-18

10.S.C. 31  
280.S.C. 31246

/s/ Walter McAnnis  
M.C.I  
PB-27  
4848 Goldmine H.W.Y  
Wershaw S.C. 29067