

Bernard McFadden

June 29<sup>th</sup>, 2018

P.O. Box 1622, Columbia

South Carolina 29202

Daniel E. Shearouse, Clerk

S.C. Supreme Court, P.O.

Box 11330, Columbia, S.C. 29211

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JUL 02 2018

S.C. SUPREME COURT

RE: McFadden vs. State, Appellate Case # 2016-002319

Dear Clerk:

Enclosed, please find Petitioner's Rule 59(E) Motion To Address Issue 6, clearly brought in PCR Application for filing in your office; also find an extra copy of p. 1 of 8 with a self-addressed - stamped - envelope for a clocked - stamped - like copy.

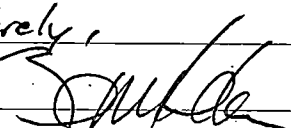
Thanking you in advance,

cc:

Jule Coleman, Assist. Atty. Gen.

Taylor D. Gillman, Appellate Defender

Sincerely,

5/1   
Bernard McFadden

State of South Carolina  
County of Richland

p 1 of 8

In South Carolina Supreme Court  
Appellate Case # 2016-002319

Bernard McFadden, 199135,  
Petitioner,

Rule 59(E) Motion To Address  
Issue # 6, Clearly Brought  
In PCR Application

vs.

State of South Carolina,  
Respondent

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S.C. SUPREME COURT

Petitioner contends he hasn't gotten a full bite out of the apple. Petitioner submits he brought Issue # 6 alleging 6 and 14<sup>th</sup> Amendment violations where counsel was aware of altered or staged evidence taken from the crime scene. (See Appendix at p. 426, Trial Transcript at p. 423, Bronson's closing argument to the jury.) However, (PCR) counsel falsely testified at Petitioner's (PCR) hearing that he saw no problems with the evidence (Appendix at p. 645, (PCR) Transcript at p. 132), clearly contradicting his closing argument to the jury that the (PCR) court's order did not address or provide any factual basis or conclusions of law. (See Appendix at p. 658, (PCR) Courts 10/11/2016 order not addressing this issue, Id. at pgs. 658-671.)

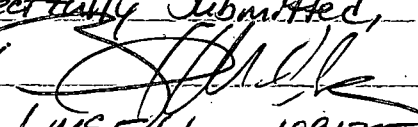
In fact, petitioner properly filed a Rule 59(E) Motion with the (PCR) court that was denied by Judge James. (See Appendix at p. 675.) As done with the (PCR) court, petitioner now also files a Rule 59(E) motion with this court to address the following U.S. Constitutional question under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments, a question with

the same extraordinary circumstances that were presented to, and addressed by, this court in Simmons vs. State, Appellate No. 2014-00387 (June 08<sup>th</sup>, 2016):

Whether the (PCR) court erred in denying Petitioner relief where counsel failed to file a motion to hire photographic / blood splatter expert witnesses to explain to jury photographs and blood droplet did not represent a true and correct position of evidence in light of Simmons vs. State... (See also Attachment A, p. 1 of 4; and Attachment B, p. 1 of 10, both the Pro se Petition For Certiorari and Motion To Supplement Appendix.)

This Court's order appears to limit petitioner's issues to only what counsel of record briefed, despite the fact that there was a break down in communication between counsel and petitioner, despite the fact that the issue is one of extraordinary circumstances, and despite the fact that it was properly brought - but not ruled on - before the (PCR) court.

**WHEREFORE**, petitioner moves before this court to alter or amend the judgment, or otherwise address the issue presented in Attachment A, p. 3 of 8, attached hereto.

Respectfully Submitted,  
S/   
Bernard MS Fadden, 199135  
P.O. Box 1622, Columbia  
South Carolina 29202  
(803) 201-9477

June 29<sup>th</sup>, 2018

State of South Carolina  
County of Richland

In The South Carolina Supreme Court  
Appellate Case # 2016-002319

Bernard McFadden,  
Petitioner,

vs.

Petition For Writ of Certiorari

State of South Carolina,  
Respondent.

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S.C. SUPREME COURT

Issue Presented :

Whether the PER court erred in denying Petitioner relief where counsel failed to file a motion to hire photographic / blood splatter expert witnesses to explain to jury photographs and blood droplet did not represent a true and correct position of crime scene evidence in light of Simmons vs. State, Appellate No. 2014-00387 (June 08<sup>th</sup>, 2016); and City of Columbia vs. Assad - Faltas, Case # 2007-UP-193 (S.C. Ct. App. April 26<sup>th</sup> 2007) ?

Facts :

Petitioner alleged that counsel was ineffective in not filing a motion for certain expert witnesses in Issue # 6 of his Amended (PER) application. (See Motion To Supplement Appendix, Attachment A herewith this Pro-se Petition For Writ of Certiorari.)  
At the 4/16/2015 (PER) hearing, Petitioner testified to the same, that trial counsel was ineffective for not filing motion for

photography and blood splatter experts to explain the manufactured position of evidence to the jury. (See Appendix at p. 584, lines 12-25; p. 585, lines 1-11.)

When trial counsel Willie Brunson was asked whether the evidence appeared to be altered at Petitioner's (PCR) hearing, counsel testified that he did not see where it was necessary to hire a blood splatter or photography expert after reviewing the single blood droplet shown at p. 499 of the Appendix. (See Appendix at p. 644, lines 11-25; p. 645, lines 1-16.) When asked about other photographs that show a first aid kit box being in some photos on a shelf, but not in others (Compare Appendix pgs 501, 502, 503 to 504.), Brunson maintained there wasn't a need.

Brunson testified that it wasn't necessary to hire expert witnesses (See Appendix at p. 645, lines 17-25.) And unfortunately the (PCR) court failed to find the significance of trial counsel Brunson's following closing statement to the jury:

" Now on this photo there is a pack of New Port cigarettes and a lottery ticket lined up perfectly. There's blood on -- what appears to be blood on the box. Was that swabbed? When you go into the jury room you will have these pictures... You will be able to ask yourself these questions. And you will be able to look at these photos. And you will be able to compare and contrast... (Appendix at p. 426, lines 11-21.)

" So I submit to you that it is possible that in the realms of reality that this blood was

placed in this Young's Market (Appendix at p. 430, lines 1-3).

Applicable Law:

In Simmons, Simmons filed a (PCR) application alleging, among other things, ineffective assistance of counsel in relation to his trial counsel failure to adequately challenge the state DNA evidence. Vacating and remanding in part, this Court stated in Simmons vs. State that:

"It is established that a conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the 14<sup>th</sup> Amendment. The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears." Simmons vs. State, Appellate No. 2014-00387 (June 08<sup>th</sup>, 2016) at p. — (citing Napue vs. Illinois, 360 US 264, 289 (1959) (other citations omitted.)) (See also City of Columbia vs. Assaad - Faltas, where a new trial was granted and affirmed after a digital enlargement of trial photo proved that two Walmart employees made mistaken or fabricated testimony.)

Conclusion

**WHEREFORE**, petitioner prays that this court find the (PCR) court did err in not finding trial counsel ineffective in light of his closing argument to jury without expert witnesses to explain evidence to jury - in violation of Petitioner's 6<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution.

Proof of Mailing

Appellate Case #: 2016-002319

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly - addressed - stamped envelope in the U.S. Mail this 01<sup>st</sup> day of May 2018; such matter being: Petition And Motion To Supplement Appendix;

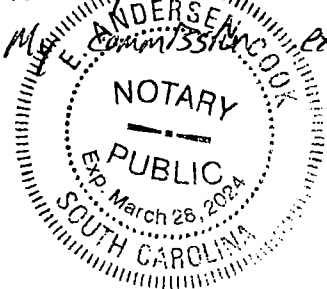
1) Julie Coleman, Esq., Robert Dennis Building, 1000 Assembly Street, Room 519, Columbia South Carolina 29201;

2) Daniel E. Shearouse, clerk S. C. Supreme Court, Post Office Box 11330, Columbia South Carolina 29211;

and 3) Taylor D. Gilliam, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401 Columbia, S.C 29201-3332

Sworn And Subscribed Before Me This 1<sup>st</sup> day of May 2018

[Signature]  
Notary Public For South Carolina  
My Commission Expires: 3-28-2024



[Signature]  
Bernard McFadden  
Pro se Petitioner  
(803) 201-9477

State Of South Carolina  
In The Supreme Court

Certiorari Sumter County

Honorable George C. James, Circuit Court Judge

Bernard McFadden,

Petitioner,

vs.

State of South Carolina,

Respondent.

Appellate Case No. 2016-002319

Motion To Supplement Appendix

Petitioner submits the Appendix does not contain the Amended (PCR) Petition dated November 6<sup>th</sup>, 2012, and without review of it, petitioner contends he will not get a full and fair consideration of this appeal.

Therefore, he moves before this court for an order supplementing the record with the attached amended (PCR) petition. (See Attachment A.)

Wherefore, petitioner prays this Court grants this motion supplementing the Appendix.

Respectfully Submitted,  
SI 1 [Signature]

Bernard McFadden

P.O. Box 1622

Columbia, S.C. 29202

(803) 201-9477

Pro-Se Petitioner

(Attachment B)

# Proof of Mailing

p. 8 of 8

Appellate Case # 2016-002319

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly addressed stamped envelope in the U.S. mail this 29<sup>th</sup> day of June 2018; such matter being: Rule 59(E) Motion To Address Issue # 6, Clearly Brought In PCR Application With An Extra p. 1 of 8 of said Motion With A Self-Addressed Envelope For Returned - Clocked - Stamped - Filled Copy:

1) Julie Coleman, Assistant  
Attorney General, Rembert  
Dennis Building, 1000  
Assembly Street, Room 519  
Columbia, S.C. 29201;

2) Taylor D. Gilliam, Appellate  
Defender, S.C. Commission  
on Indigent Defense, P.O.  
Box 11589, Columbia, S.C.  
29211-1589; and

3) Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
P.O. Box 11330, Columbia, S.C. 29211

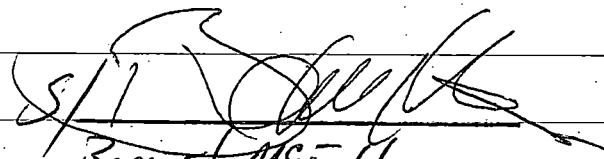
Sworn And Subscribed Before Me

This 29 day of June 2018

R. Wesley Sparks III

Notary Public For South Carolina

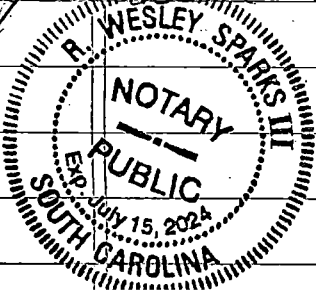
My commission expires: July 15, 2024



Bernard McFadden

Pro-se Petitioner

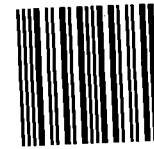
(803) 201-2477



Bernard McFadden  
P.O. Box 1682  
Columbia, S.C. 29202



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South Carolina 29211

