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State Of South Carolina  
To The Supreme Court

NOV 13 2018

S.C. SUPREME COURT

Certiorari to Horry County  
Honorable William H. Seals, Circuit Court Judge

Forrest Nelson, Jr.  
Petitioner

"VS."

State Of South Carolina  
Respondent

Appellate Case No. 2018-000155

Pro. Se. Brief of Appellate

## ( Issues Presented )

- I. Whether The Circuit Court failing to inform The Petitioner of his right to Confront his accuser renders his guilty plea Constitutionally Null and void?
- II. Whether Petitioner's guilty plea was freely, knowingly, voluntarily, and intelligently given to the Court, when Counsel gave Petitioner erroneous advice to plead guilty?
- III. Whether Counsel was inept, and Constitutionally ineffective for failing to inform Petitioner that he could appeal his guilty plea?

## ( Arguments )

- I. Because the Circuit Court failed to inform The Petitioner of his right to Confront his accuser, Petitioner's guilty plea is Constitutionally Null, and Void.

As a Starting premise, it is Federal Law as determined by the U.S. Supreme Court, that a criminal defendant must be made aware of his right to a jury trial, the privileges against Self incrimination, and the right to Confront his Accusers, *Boykin vs. Alabama*, 395 U.S. 238 (1969), also see,

*Pittman vs. State*, 337 S.C. 597, 524 S.E. 2d. 623 (1999)

Being So, It is the Constitutional Command That every Judge must enforce The Command of The U.S. Supreme Court, Article 3 2 (U.S. Const.).

In view of this, I am respectfully requesting that this Honorable Court review the facts from the record in this case, because the Law arises from facts (Lex Facta oritur jus). Inasmuch, with this foundation fresh in mind, this Court should find it Constitutionally problematic that the Circuit Court "failed" to inform Petitioner of his right to confront his accuser, (Appendix pg. 5-6). To be absolutely sure, the record shows unequivocally that the Court informed the Petitioner of his right to remain silent, (App. pg. 5 L. 9-10), and the right against self-incrimination, also the right to a jury trial (App. pg. Five (5) L. 14-19), The Court also informed Petitioner that his Counsel could question the witnesses in this case, (App. pg. 6 L. 1-3), however the records clearly and unequivocally demonstrate that the Court never informed the Petitioner that he had the right to confront his "Accuser". In point of fact, the word "Accuser" is not found in the record at all. Assuming arguendo, a witness, and the accuser are defined differently, to wit,  
witness - One who can give first hand account of something.  
accuser - To charge formally with a wrongdoing; To make a charge of wrongdoing against another.

Given this understanding, it is pellucid that the Circuit Court failed to inform Petitioner of one of the required Bayles mandates. Being so, Petitioner's 14<sup>th</sup> Amendment right to the U.S. Constitution was violated, and his guilty plea here is Constitutionally null & void.

II. Because Counsel gave Petitioner erroneous advice to plead guilty, his guilty plea was not freely, knowingly, voluntarily, and intelligently given to the Court.

In *McMann vs. Richardson*, 397 U.S. 759, 90 S.Ct. 1441 (1970) our Supreme Court made it clear, That Counsel's advice to a criminal defendant to plead guilty, must fall within the range of competence demanded of attorneys in criminal cases. This case sub judice is somewhat sui generis nature.

The reason being is this, Petitioner clearly, and unequivocally informed Counsel, that he did NOT have a weapon, and did NOT use the "representation" of a weapon when the store was robbed. Inasmuch as Counsel reviewed the "video tape" of the incident, he also did not see a weapon, or the representation of a weapon being used in the robbery as stated in the Counsel's Johnson's Petition on page 4.

Simply put, there is NO credible evidence adduced in this case for Counsel to advise Petitioner to plead guilty to armed robbery. Counsel's advice to Petitioner to plead guilty to armed robbery, when Counsel reviewed the video himself, and saw NO weapon or representation of a weapon, it cannot be said that Counsel's advice fell within the range of competence demanded of attorneys in criminal cases. If Counsel would have properly advised Petitioner, and prepared a defense, moreover informed Petitioner of the defense, he would not have pleaded guilty and went to trial, *Hill vs. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985).

III. Because Counsel did not inform Petitioner That he could appeal his guilty plea, Counsel was inept and Constitutionally ineffective

This much is certain, The record clearly shows that The Court did [Not] inform Petitioner That he could appeal his guilty plea (App. pg. 14). In *Poe vs. Flores-Ortega*, 120 S. Ct. 1029 (2000), The Court made it clear that "Counsel has a Constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think that a rational defendant would want to appeal, or the defendant reasonably demonstrated to Counsel that he was interested in appealing." Id. at 1036. In this case, we know from The record evidence that Petitioner was not satisfied with a armed robbery conviction, and felt That he was only guilty Strong armed robbery. Being so, Counsel in a real Constitutional sense was inept and Constitutionally ineffective for failing to consult with Petitioner about an appeal when The court did not inform him. What we know as a fact, is that The video did [Not] show That a weapon was used in The robbery, and There was no representation of a weapon seen in The video by Counsel, being so, an appeal would not have been frivolous, and Petitioner had a real chance to win on The merits in This case. Clearly, Petitioner's 6<sup>th</sup> and 14<sup>th</sup> Amendment rights to The U.S. Constitution was violated in This case.

( Conclusion )

For The reasons Stated, Petitioners Conviction Should  
be Vacated.

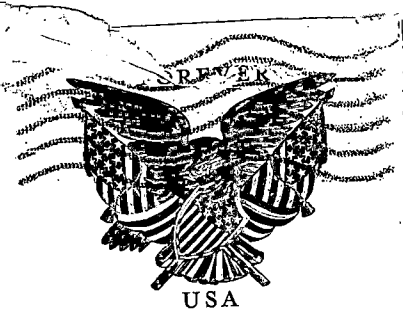
Respectfully Submitted,

11/7/18  
Date

Joseph Neenan

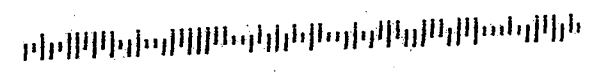
Mr. Forrest Nelson, #367870  
Cershaw C.I.  
1848 Goldmine Hwy  
Kershaw S.C. 29067-8069

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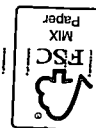


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Columbia S.C. 29211

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