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PROCEDURE HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In November 2012, the Richland County Grand Jury indicted Petitioner for murder (2012-GS-40-5900) and kidnapping (2012-GS-40-5901). Victor Li, Esquire represented the Petitioner. Assistant Solicitor Dolly Garfield, Esquire prosecuted the case. On November 4, 2015, Petitioner pleaded guilty as indicted to all charges before the Honorable Clifton Newman. Pursuant to a recommendation by the State, Judge Newman sentenced Petitioner to imprisonment for concurrent terms of forty-five years for murder and thirty years for kidnapping, with no sexual registry. Petitioner did not appeal his conviction or sentence.

On July 19, 2016, Petitioner filed a post-conviction relief (PCR) application that alleged plea counsel provided ineffective assistance of counsel when he failed to advise Petitioner of his ability to challenge the admissibility of the inculpatory coerced statement law enforcement took from Petitioner after he invoked his Miranda right to be silent and be afforded to an attorney, and questioning still continued. On July 28, 2017, the state filed its return. Petitioner's PCR hearing was held on January 25, 2018, in front of the Honorable Jocelyn Newman. Leah B. Moody represented Petitioner. Jessica Kinard represented the state.

In an order of dismissal filed on September 5, 2018 by Judge Jocelyn Newman found that, although Petitioner did invoke his Miranda rights during the audio statement, plea counsel did not provide deficient performance for failing to challenge the statement because plea counsel evaluated the recorded confession and saw no defect with it.

ARGUMENT

- i. Plea counsel was ineffective when he failed to advise Petitioner of the merits of challenging the admissibility of his statement, where Petitioner repeatedly asked the police to stop questioning him, and questioning still continued.
- ii. Plea counsel was ineffective for violating the Rules of Professional Conduct Rule 1.4, which deals with communication, stresses that a lawyer may not withhold information to serve the lawyer's own interest or convenience.
- iii. Plea counsel was ineffective for failure to object to admission of the confession to the charge of murder and kidnapping based on my clear invocation of right to remain silent during custodial interrogation.
- iv. PCR counsel was ineffective for violating the Rules of Professional Conduct Rule 1.4, which deals with communication, stresses that a lawyer may not withhold information to serve the lawyer's own interest or convenience.
- v. Judge Jocelyn J. Newman is in violation of the Judicial Misconduct Conduct Canon 3(E)(c)(o) when she made a void judgment and prejudice Petitioner's case when she wasn't a qualified judge to pronounce judgment over the Petitioner's PCR case.

RELEVANT FACTS

I. Petitioner was coerced by the police during the interrogation. He, continuously told the police officer interrogating him... he didn't want to talk to them. Continuously they kept badgering and badgering by coerced his confession and plea counsel did nothing to challenge its admissibility. Petitioner made plea counsel aware that his confession was coerced, and that he repeatedly asked for the police to stop questioning him, which plea counsel did admitted to. Plea counsel failed to challenge or even advise petitioner of the grounds his inculpatory statement to the police could be challenged such that petitioner was left unaware of his ability to challenge his statement's admissibility. Furthermore, plea counsel admitted that there may have been flaws in how the police obtained the statement that could have been challenged. Plea counsel specifically stated that petitioner might be right that the statement was coerced and maybe I should have explored challenging the statement, which plea counsel did provide ineffective assistance for failure to advise petitioner of the grounds to challenge his statement. In *Dupree v. State*, 305 S.C. 285, 287, 408 S.E.2d 215, 216 (1991), states: this Court held that counsel's failure to challenge the statement given by Dupree because of alleged threats made to Dupree during the interrogation was deficient performance. Here, plea counsel's failure to advise petitioner regarding his ability to challenge to the voluntariness of his inculpatory statement constituted deficient performance. That deficient performance prejudiced petitioner because he would not have pled guilty and proceeded to trial but of plea counsel's failure.

II. Plea counsel withheld material evidence from the motion of discovery and finally send it to me seven months after the plea process, when petitioner requested by letter and in person fourteen months before plea process that plea counsel to file a motion to compel for discovery. Plea counsel sent discovery material to petitioner on May 12, 2016 when the plea was November 4, 2015. Plea counsel failed to give petitioner the discovery material where he could have examined it and prepare an affirmative defense to the crime charged of premeditated murder, mitigating circumstances information was in the motion and would have likely succeeded at trial, or if convicted would never the less would have been given a shorter sentence than he actually received. In *Hill v. Lockhart*, supra mitigating evidence is included in police

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Statement and Forensics Report and witnesses statements. See police statement exhibit 4B line 4-10, also see negative for blood on alleged knife, transcript page 16 line 16-17 and see statements Exhibit D, 1-5. Pursuant to Gibson v. State of South Carolina, a waiver of constitutional rights not only must be voluntary, but must be a knowing and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. When a defendant lacks knowledge in the prosecutions possession the waiver of constitutional rights cannot be deemed knowing, and voluntary. The governments obligation to make such disclosure of Brady material is pertinent not only to an accuseds preparations for trial, but also to his determination of whether or not to plea guilty. The defendant is entitled to make that decision with full awareness of favorable material evidence known to the government. See transcript page 15 line 14-16 received only one statement after plea. A Brady claim is based upon the requirement of due process, such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused (2) it was in the possession of or known to the prosecution (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.

(1) Prosecution suppressed the results of the forensics being negative on the knife allegedly used as the homicide weapon which investigator sumpter stated under oath in the preliminary hearing. See Exhibit 1A page 10 line 2-3, when asked was a weapon recovered he stated yes, but was being tested. See line 7-8-9.

(2) This evidence was material to guilt or punishment.

(3) It was in the possession of and known to the prosecution.

(4) This evidence was favorable to me. See Court Transcript page 16 line 14-19, prosecution revealed in the middle of the plea process, the results of the forensics on the knife as negative of being the murder weapon. This material evidence was suppose to be revealed to me before the plea process.

Prosecution entered into the plea process a sentencing sheet for the charge of trafficking crack cocaine that was not in the discovery evidence. See Exhibit 2-A Sentencing Sheet That was not me but another Michael Peterson and a part of my record. See Exhibit 3 Discovery Record exhibit 4 and 5 Discovery Checklist. This false charge prejudiced my defense and influenced the decision makers decision in sentencing by stating

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that I got out of jail from doing one violent crime and did another. Petitioner plea was not knowingly and voluntarily or intelligently made without disclosure before plea, material evidence which effected petitioner decision to plea guilty instead of going to trial. See transcript page 31 line 1-22.

Pursuant to U.S. v. Angela Ruiz, 2002 WL 523026 U.S. Appellate Brief 9th Circuit (No. 2), Hill v. Lockhart supports the conclusion that a plea entered without disclosure of material exculpatory evidence is involuntary even though it involves the sixth amendment right to counsel rather than the due process clause, the court's decision in Hill 474 U.S. 52, strongly supports the 9th Circuit's view that a guilty plea entered without Brady Disclosure is involuntary. The court cases 16 emphasize the role of the advice of counsel in establishing that guilty pleas are voluntary and intelligently made. See Brady v. United States, 397 U.S. 758, the Court made clear in Hill how ever that where as here a defendant is represented by counsel during the guilty plea process and enter his plea upon advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demand of attorneys in criminal cases.

474 U.S. at 56, (quoting McMann v. Richardson, 397 U.S. 759-771 (1970), Thus a plea of guilty based upon substandard advice is involuntary and therefore invalid. Accordance to McCarthy v. United States, 394 U.S. 459, 466 (1968), in explicating the prejudice inquiry at the plea stage, Hill employed defense counsel's failure to uncover exculpatory evidence as an illustration.

(3) A plea entered without disclosure of Brady material is invalid as based upon misrepresentation or impermissible conduct by the prosecution. The failure to disclose Brady information prior to a guilty plea also invalidates a guilty plea because it is based on misrepresentation or other impermissible conduct by state agents. See Miller, 848 F.2d. at 1320 (citing Brady v. United States, 397 U.S. at 757). Because the non-disclosure of Brady material is impermissible conduct by state agents then a guilty plea that was knowing and intelligent may be vulnerable to challenge if it was entered without knowledge of material evidence with held by the prosecution. The evidence of the Forensic's report was material and favorable to my defense. The evidence of the sentencing sheet for Trafficking crack cocaine was material to guilt or punishment in the plea process, it was in the possession of and known to the prosecution. It was also suppressed by the prosecution. Pursuant to Brady v. Maryland, suppression of evidence

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Favorable to an accused upon request violates Due process, where evidence is material to either Guilt or to punishment, irrespective of Good Faith or bad Faith of prosecution U.S. Constitution Amendment Fourteen. At the preliminary hearing investigator Sumpter stated under oath that a weapon was recovered. See Exhibit 2B of the autopsy report states a weapon was not found at the scene of the crime. This is all material evidence. Pursuant to *Mark Alan Shirley v. State of South Carolina*, 306 S.E. 241, the Supreme Court (Harwell, J.) held that trial counsel failure to inform defendant prior to his guilty plea that his statements may have been involuntary and if so would be inadmissible at trial constituted ineffective assistance of counsel. Counsel's performance was deficient and petitioner was prejudiced because of trial counsel's performance he would not have pled guilty and would have insisted on going to trial to challenge charges (Constitution Amendment 6).

III Petitioner was compelled to plea guilty because of the states possession of an illegally obtained confession, which counsel failed to devise other procedures for the purpose of permitting me an opportunity to challenge the admissibility of petitioner's coerced confession prior to plea hearing to challenge the validity of the confession in a constitutional adequate procedure. A reasonable competent counsel suppose to insulate me from the effects of a prior illegally obtained confession. See *McMann v. Richardson*. The abiding impact of the coerced confession continued to prejudice petitioner case and unfairly influence petitioner's decision regarding petitioner's legal alternatives. See *McMann v. Richardson*

The government improperly introduced the improper influence of the coerced confession into the pleading process. The unconstitutional influence actually infected the pleading process. It was a significant factor in petitioner's decision to plea guilty. See *McMann v. Richardson*, also see Court Transcript page 40 line 12-21.

The coercive pressures were brought to bear upon petitioner at the very moment petitioner was called to plea. Compelling petitioner to plea, See Court Transcript page 4 line 1-5. Petitioner's plea was involuntary because petitioner was forced to plea before all the evidence was in. Petitioner's plea was not intelligently made but violate petitioner's due process and counsel's deficient performance

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prejudice petitioners case. See exhibit 1 B; date received motion after plea. Pursuant to *Miranda v. Arizona*, IF AN INDIVIDUAL IS ALONE AND INDICATE IN ANY MANNER AT ANYTIME PRIOR TO OR DURING QUESTIONING, THAT HE WISH TO REMAIN SILENT THE INTERROGATION MUST CEASE. THE SUSPECT REQUEST MUST BE SCRUPULOUSLY HONORED, AND THE POLICE MAY NOT ATTEMPT TO CIRCUMVENT THE SUSPECT'S DECISION BY REFUSING TO DISCONTINUE THE INTERROGATION UPON REQUEST OR BY PERSISTING IN REPEATED EFFORTS TO WEAR DOWN HIS RESISTANCE AND MAKE HIM CHANGE HIS MIND. SEE EXHIBIT C 1-10 AND PAGE 7 LINE 2 AND PAGE 10 OF 10 LINE 2. IF AN INDIVIDUAL IS ALONE AND INDICATE IN ANY MANNER THAT HE DOES NOT WISH TO BE INTERROGATED, THE POLICE MAY NOT QUESTION HIM. THE MERE FACT THAT HE MAY HAVE ANSWERED SOME QUESTIONS OR VOLUNTEERED SOME STATEMENTS ON HIS OWN, DOES NOT DEPRIVE HIM OF THE RIGHT TO REFRAIN FROM ANSWERING ANY FURTHER INQUIRES UNTIL HE HAS CONSULTED WITH AN ATTORNEY AND THERE AFTER CONSENT TO BE QUESTIONED. ANY STATEMENT TAKEN AFTER A PERSON INVOKES HIS FIFTH AMENDMENT RIGHT CANNOT BE OTHER THAN THE PRODUCT OF COMPELSION. PETITIONER INVOKED HIS RIGHTS MORE THAN 15 TIMES AND TRIED TO END THE INTERROGATION AND ALSO REQUESTED TO LEAVE. SEE EXHIBIT C PAGE 6 OF 10 LINE 7. Pursuant to *Kevin Jones Jr. v. Harrington*, DEFENDANT'S STATEMENT TO OFFICERS THAT HE DID NOT WANT TO TALK NO MORE WAS AN UNAMBIGUOUS INVOCATION OF HIS RIGHT TO REMAIN SILENT UNDER *Miranda*. *Miranda* PROHIBITION ON CONTINUED QUESTIONING AFTER THE PERSON IN CUSTODY HAS DECIDED TO REMAIN SILENT IS A BRITE LINE, A PROPHYLACTIC SAFE GARD WHOSE APPLICATION DOES NOT TURN ON WHETHER COERCION IN FACT WAS EMPLOYED. DEFENDANT STATEMENT TO OFFICERS THAT HE DID NOT WANT TO TALK NO MORE WAS AN UNAMBIGUOUS INVOCATION OF HIS RIGHT TO REMAIN SILENT, AND THUS, OFFICERS VIOLATED *MIRANDA* BY CONTINUING TO INTERROGATE DEFENDANT AFTER HE MADE THE STATEMENT. DEFENDANT STATEMENT INDICATED THAT HE DID NOT WISH TO BE INTERROGATED, HE DID NOT EQUIVOCATE BY USING WORDS SUCH AS MAYBE OR MIGHT OR I THINK NOTHING HE DID OR SAID LEADING UP TO THIS STATEMENT MADE IT AMBIGUOUS AND THE ONLY STATEMENT THAT COULD CAST ANY AMBIGUITY ON DEFENDANT'S INVOCATION WERE STATEMENTS HE MADE AFTER THE FACT, BUT THESE LATER STATEMENTS COULD NOT BE USED TO ESTABLISH THAT HIS EARLIER STATEMENT WAS AMBIGUOUS. SUSPECTS CAN INVOKE THEIR RIGHTS TO REMAIN SILENT UNDER *MIRANDA* IN MANY WAYS, THEY MAY INVOKE THEIR RIGHTS BY SIMPLY REMAINING SILENT, OR THEY MAY INDICATE IN OTHER WAYS, INCLUDING WORDS THAT THEY DO NOT WANT TO TALK TO THE POLICE. UNDER *MIRANDA*, OFFICERS MUST STOP

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QUESTIONING a suspect once he unambiguously invoke his right to remain silent, and if they do not, the suspect statement can no longer be used against him. Under miranda the onus is not on the suspect to be persistent in his demand to remain silent, rather the responsibility falls to the law officers to scrupulously respect his demand. Here there is no doubt officers violated miranda certainly Jones saying he didnt want to talk anymore and myself invoking my miranda rights more than fifteen times qualifies as indicating in any manner that he does not wish to be interrogated and there's no real dispute that officers continued interrogating Jones (and myself) officers knew well that he was invoking his rights but continued to push him for more answers. I understand that but no fair minded jurist could reasonable interpret this statement to be ceasing the interrogation. See Exhibit C page 6 of 10 line 13 and 14. Ok that's fine im good with that How tall are you? Continuing questioning after invocation. pursuant to people v. Amando Bichara, 2017 WL 397619. Defendant confess to murder was inadmissible as a matter of law in trial for murder and kidnapping, especially in context of defendant prior expression of desire not to talk and his repeated request to leave interrogation room and go lie down, reasonable officers under the circumstances would have understood defendants statement during custodial interrogation that he refuse to talk to interrogating officers to be an invocation of defendants right to decline to answer further questions and end the interview and interrogation that followed defendants statement that he refuse to talk to officers, which include confession was violation of miranda. Petitioner repeatedly request to leave interrogation room and go to the county jail. Pursuant to U.S. v. Rambo, 365 F.3d 906, 910-911. In the relevant exchange Moran asked Rambo (do you want to talk to me about this stuff. Given Moran's earlier comment it's clear that he's referring to robberies in response to Moran's question, Rambo say NO, under the circumstances of this case, Rambo's refusal to discuss the robberies was a clear and unambiguous invocation of his right to remain silent. If Rambo invokes his right to remain silent and Moran failed to scrupulously honor that right, Rambo's confessions must be suppressed, NO is a clear and unambiguous invocation of miranda. See Confession Statements / Exhibit C page 1-10.

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Investigator Behney stated in his case summary, that i stated. that Petitioner understood his rights, See Exhibit 8-B Line 17. Petitioner never spoke a word in response to rights being read. See Rights Exhibit 7-B page 8. Counsel's Failure to object to admission of my confession to murder and kidnapping based on my clear invocation of right to remain silent during custodial interrogation prior to confession constituted deficient performance as element of ineffective assistance of counsel claim. There was no imaginable tactical reason for failing to object, as there wasn't nothing favorable to me in my statement after petitioner invoked his right to remain silent and counsel did not use petitioner's statement to petitioner's advantage. Counsel's Failure to object to petitioner's clear invocation of right to remain silent was prejudicial to murder and kidnapping conviction. The Supreme Court held that trial counsel's failure to inform defendant prior to his guilty plea that his statements may have been involuntary and if so, would be inadmissible at trial and constituted ineffective assistance of counsel. Counsel's performance was deficient and petitioner was prejudice.

IV. PCR counsel was ineffective because she failed to keep petitioner inform on all developments of the case as well who the judge will be. Also PCR counsel failed to object to the fact that the Honorable Jocelyn J. Newman is the daughter of the Honorable Clifton Newman which she should have requested for a continuence due to the fact that the PCR judge is related to the trial judge and this makes the PCR judge disqualify because the law provides a fundamental fairness to indigent defendants to an adequate opportunity to present their claims fairly within the adversary system. This promise of an adequate opportunity. See Ake v. Oklahoma, 470 U.S. 68, 77 (1985). The petitioner is entitle to one bite of the apple. See Aice v State, 409 S.E.2d 392, 394 (S.C. 1991). Petitioner did not get the one full bite of the apple because the judge being the daughter of the trial judge was bias and prejudice by overlooking the facts that showing she is not eligible to pronounce judgment on petitioner case and also overlooking the facts that petitioner's lawyer has admitted on the stand and under oath that the statements was obtained illegally. So PCR counsel's performance was deficient and petitioner was prejudice because she allowed this PCR hearing to convene when knowing that the

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PCR judge was the daughter of the trial judge and knowing that the daughter will not be qualify to pronounce judgment over the case and also will be bias by not overturning or reversing her Father's decision.

V. PCR Judge erred in not disqualifying herself in the petitioner's case when she knew that she is the daughter of the same judge who has sentence the petitioner. She has prejudice the petitioner by pronouncing a void judgement on the petitioner case and she knows that she, individually as a judge's child wherever residing, or any other member of the judge's family who has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than deminimis interest that could be substantially affected by the proceeding;

The PCR Judge has violated the Judicial Misconduct Canon 3(E)(c)(d) and the petitioner was prejudice by the PCR Judge misconduct because she did not disqualify herself due to her being related to the same judge who sentence the petitioner.

CONCLUSION

For the reason stated, petitioner asks the Court to grant the petition for writ of certiorari.

Respectfully submitted,

1st Michael Peterson

Michael K. Peterson
McCormick Correctional Inst
386 Redemption Way
McCormick, SC 29899

Prose Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

MICHAEL K. PETERSON
Petitioner

v.

STATE OF SOUTH CAROLINA
Respondent

APPELLATE CASE NO. 2018-001816

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DATED this 2 day of May, 2019.

Michael Peterson
Michael K. Peterson

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SIZE 12 WORKBOOT 1 @ 36.45 = 36.45

TOTAL: 36.45

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PERRY CANTEEN #01
LOCATION: 0191 CANTEEN # 01

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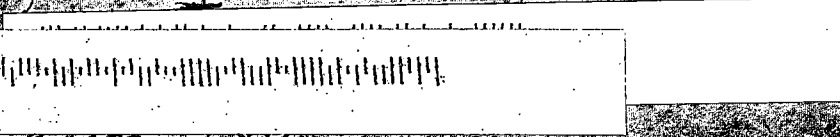
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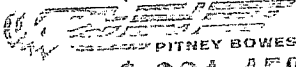


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