

# EXHIBIT

# 1

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S.C. SUPREME COURT

# The Supreme Court of South Carolina

John Dewayne Garvin, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-001418

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## ORDER

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Petitioner, who is proceeding without counsel in this case, has filed two motions.

In the first motion, petitioner asks for access to certain lawyer disciplinary records for the purpose of supplementing the appendix with those records. Since these disciplinary records were not before the post-conviction relief judge, they are not part of the lower court record, and cannot be included in the appendix. *Jamison v. State*, 410 S.C. 456, 765 S.E.2d 123 (2014); Rule 243(f) of the South Carolina Appellate Court Rules. Accordingly, the first motion is denied.

In the second motion, petitioner alleges the transcript of the hearing held in this case is not true, accurate or complete. He asks this Court to grant him access to the audio recording and steno notes from this hearing. Since this matter is more appropriately considered using the procedures provided by the South Carolina Court Reporters Manual, the motion filed with this Court is dismissed. Section XIII(B) ("Court reporters shall not grant any request to listen to audio recordings or to read steno notes unless the requestor has received written authorization from the presiding judge or, in his/her absence, the chief judge for administrative purposes in that circuit.") and Section XIII(C) (outlining procedure for challenging accuracy

of transcripts), South Carolina Court Reporter Manual.<sup>1</sup>

  
FOR THE COURT

C.J.

Columbia, South Carolina  
May 25, 2021

cc: William Harold Ray, Esquire  
Mr. John D. Garvin, 355509  
The Honorable Amy W. Cox

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<sup>1</sup> Available at [www.sccourts.org/courtreporter/courtreportermanual.pdf](http://www.sccourts.org/courtreporter/courtreportermanual.pdf).

# **EXHIBIT**

**2**

# The Supreme Court of South Carolina

John Dewayne Garvin, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-001418

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## ORDER

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Petitioner has filed a *pro se* motion to supplement the appendix with various documents. To the extent this motion is seeking to include documents or materials in the appendix beyond those specified by Rule 243(f) of the South Carolina Appellate Court Rules (SCACR), the motion is denied. *Jamison v. State*, 410 S.C. 456, 765 S.E.2d 123 (2014). When the appendix is filed in this case, it shall only include the materials specified by Rule 243(f), SCACR.<sup>1</sup>



FOR THE COURT

C.J.

Columbia, South Carolina

May 26, 2021

cc: William Harold Ray, Esquire  
Office of Appellate Defense  
Mr. John Dewayne Garvin

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<sup>1</sup> To the extent petitioner continues to complain about inaccuracies in the transcript prepared by the court reporter, petitioner should pursue the procedure provided by the South Carolina Court Reporter Manual.

# **EXHIBIT**

**3**



- b. Petitioner re-alleges and incorporates by reference each allegation as mentioned in his Motion to Disqualify and/or Recusal of Judge from No.(s): 1 – 19.
- c. Petitioner states that Judge Cole has personal knowledge of disputed evidentiary facts concerning the proceeding to this case. Pursuant to Rule – 501, SCACR, Canon – 3(C)(E)(1)(a).
- d. Judge Cole was the Judge who had presided over Petitioner's Co-defendant, Jonathan Perez's guilty plea hearing and sentence on December 17, 2012. (See State v. Jonathan Perez, 2012-GS-42-5947; 5948), (also see Exhibit – B, Co-defendant, Jonathan Perez's Guilty Plea Transcript).
- e. Judge Cole is the judge that signed the Order relieving the Seventh Judicial Circuit Public Defender of representing John Garvin. And further ordering the Spartanburg County Clerk of Court to appoint Counsel. (See Exhibit – C).
- f. Petitioner has written a letter to Judge Cole during the month of December, 2012, while Petitioner was a pre-trial detainee and Judge Cole was the Chief Administration Judge in Spartanburg County. Whereas, Petitioner had asked for him to relieve Scott D. Robinson, Esquire, as his counsel of record on his case. Petitioner has stated this fact during his May 21, 2013, trial. (See Tr.p. 82, Ln. 12 – 18)(Petitioner states on the record that he wrote a letter to Judge Derham Cole asking to be appointed another counsel).
- g. In Judge Cole's Order of Dismissal, he would state that he "has no extra-judicial relationship with anyone in the Circuit Solicitor's Office." But his Order of Dismissal contradict that statement, whereas, Petitioner has issues that deal with Prosecutorial Misconduct, Police Misconduct, Fraud, Conspiracy, an Involuntary Confession, Falsified Arrest Warrant, Judicial Bias, and an issue of Actual Innocence. Those issues are based in facts that deal with official misconduct by the Solicitor and the Police Officer's that are involved with this case. By Judge Cole not even addressing those issues in his Order of Dismissal, proves that there is reasonable questions about Judge Cole's impartiality and him still being psychologically wedded to his previous position as an Assistant Solicitor.

**B. Two Motion for Relief from Judgment Pursuant to Rule – 60(b)(2)(3)(4), SCRCR and S.C. Code Ann. § 17-27-20(A)(4), Based Upon After-Discovered and Extrinsic Fraud Misrepresentation, and Misconduct of the Prosecutor and Trial Counsel.**

- a. The Order of Dismissal, denying these two motions are misplaced, shortsighted, and misrepresents the law that is practiced in South Carolina. Judge Cole does not cite or provide any legal authority to support or substantiate his finding that "the rules of civil procedure cite[d] in support of [Petitioner's] motion are not applicable to a judgment of guilty entered in a criminal prosecution."

- b. Petitioner argues that Rule -- 71.1(a), SCRCR, States that "[t]he procedure for post-conviction relief is provided by the uniform post-conviction procedure Act (Act), S.C. Code Ann. §§ 17-27-10 to -120 (1985). The South Carolina Rule of Civil Procedure shall apply to the extent that they are not in consistent with the Act."
- c. Petitioner also argues that this Order does not even address the relief requested pursuant to S.C. Code Ann. § 17-27-20(A)(4).

**C. Motion for Issuance of a Rule to Show Cause.**

- a. The Order of Dismissal, denying Petitioner's Motion for Issuance of a Rule to Show Cause requiring certain witnesses to appear and show cause why they should not be held in contempt for providing perjured testimony. Is misplaced, shortsighted, and misrepresents the law that is practiced in South Carolina. Judge Cole does not cite or provide any legal authority to support or substantiate his finding that "a post-conviction relief proceeding is not the appropriate forum to address whether or not perjured testimony was provided during the trial of Petitioner's case."
- b. Petitioner states that the evidence that he presented at his PCR hearing is evidence that affect the credibility of the State's witnesses and it calls their testimony that they gave into question. See State v. Dean, 427 S.C. 92, 103, 828 S.E.2d 243 (2019) (citing Giglio v. United States, 405 U.S. 150, 154-55, 92 S.Ct. 763 (1972)).
- c. Petitioner states that in State v. Dean, Dean's PCR hearing was an appropriate form to address whether or not perjured testimony was provided during the trial of his case.

**D. Motion for Summary Judgment and Declaratory Judgment to Determine the Legality and Constitutionality of Grand Jury Action.**

- a. Petitioner re-alleges and incorporates by reference each allegation as mentioned in his Grand Jury Indictment Lacks Subject Matter Jurisdiction issue and his Falsified Arrest Warrant issue.
  - b. Please see Petitioner's issue of Grand Jury Indictment Lacks Subject Matter Jurisdiction and Falsified Arrest Warrant within this affidavit.
7. The Petitioner has raised before this Court twelve (12) issues to challenge the legality and constitutionality of his erroneous conviction, as they are listed below:

**A. Ineffective Assistance of Appellant Counsel**

- a. Petitioner hereby waives this issue.

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**B. Ineffective Assistance of Counsel, Scott D. Robinson has Violated Petitioner's Right to Adequate Legal Representation:** (1) The State has failed to provide Petitioner with effective assistance of counsel for his October 25, 2012, preliminary hearing during the critical stage of his State proceeding, pursuant to *U.S. v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039 (1984); (2) Counsel Scott D. Robinson's abandonment at Petitioner's preliminary hearing has deprived him of effective assistance of counsel that could have avoided the detriment of an overreaching prosecution that could not establish any showing of facts that can be made sufficient to create a fair probability that evidence of a crime for drug trafficking did exist for him to be indicted; (3) Petitioner's trial counsel, Scott D. Robinson, Esquire, misrepresentations has undermined the validity of Petitioner's State proceeding and trial; (4) Petitioner did not receive effective assistance of counsel to challenge the State's prosecution of Petitioner's case; (5) Counsel, Scott D. Robinson, Esquire, has entirely failed to subject the State's prosecution of Petitioner's case to meaningful adversarial testing, pursuant to *U.S. v. Cronin*, *Supra.*; (6) Petitioner's trial counsel, Scott D. Robinson has abandoned his role as defense counsel for Petitioner and has conspired with Asst. Solicitor, James E. Hunter, to bolster the State's case against the Petitioner; (7) There was a total breakdown in the adversarial process during Petitioner's trial; (8) Petitioner states that his trial counsel, Scott D. Robinson, Esquire's deficient performance of 15 failures that's listed below to subject the State's case to adversarial testing is per-se prejudice under the second prong that was established in *U.S. v. Cronin, Supra.*

**1. Counsel's Failure to Object to the State's Adduce Evidence of Falsified Involuntary Confession.**

- a. During Petitioner's *Jackson-Denno* hearing Counsel Robinson would make just a "standard motion in term of voluntariness and a regular *Jackson v. Denno* objection." without setting forth the grounds for the objection. (See *J.P. 83*, Ln. 11-13).
- b. Although Counsel Robinson did object to the State's admittance of a falsified involuntary confession. The objection was de minimis and deficient for it omitted the grounds for the objection. Pursuant to *Stone v. State*, 419 S.C. 370, 389, 798 S.E.2d 561, 571 (2017).
- c. Counsel Robinson's failure to properly object to the State admittance of the falsified involuntary confession has allowed the jury to be influenced by the alleged confession statement. See *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710 (1993).

**2. Counsel Robinson's Failure to Prepare Law and Evidence for Trial.**

- a. On November 8, 2012 and December 10, 2012, Counsel Robinson signed and accepted discovery evidence from Asst. Solicitor, James E. Hunter. (See Exhibit - D).

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States Constitution. Also see Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855 (1983).

- b. Counsel Robinson fail to quash the indictment on the ground that Petitioner was denied due process of law by reason of the fact that he was not afforded his requested preliminary hearing. (See Exhibit – M), See State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972).
- c. Asst. Solicitor, James E. Hunter, based probable cause off of the arrest warrant that lacks any finding of a showing of probable cause within the arrest warrants affidavit. (See Tr.p. 11, Ln. 22 – 24).
- d. The indictments does not state any essential facts that constitutes the offense charged.
- e. The indictments fails to sufficiently apprise the Petitioner of what he must be prepared to meet.
- f. The indictments does not apprise the Petitioner with reasonable certainty, of the nature of the accusation against him. See Russell v. United States, 369 U.S. 749, 764 82 S.Ct. 1038 (1962).
- g. Counsel's failure to file a motion to quash indictments has prejudiced the Petitioner and has allowed the State to convict him on false evidence that did not go before the grand jury.

5. ***Counsel's Failure to Object to the Solicitor's Manipulation of Court Docket in the Prosecution of Case.***

- a. Petitioner's Case History Report (see Exhibit – H), shows that his trial was rescheduled four times. First during the 18<sup>th</sup> – 22<sup>nd</sup> week of March 2013, the second was during the 8<sup>th</sup> – 12<sup>th</sup> week of April, 2013, the third was during 8<sup>th</sup> – 12<sup>th</sup> week of July, 2013, and the fourth was during the 20<sup>th</sup> – 25<sup>th</sup> week of May, 2013, to make sure Petitioner's case goes before Circuit Court Judge G. Lawton McIntosh, (see State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012)), who Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esquire, had an in chambers discussion with Judge McIntosh on or about April 12, 2013, about a Motion to Relieve Counsel that was filed by Counsel Robinson and two complaints that Petitioner filed with the Office of Disciplinary Counsel (ODC) and a Federal Habeas Corpus that was filed in Federal Court against Counsel Robinson and Asst. Solicitor, James E. Hunter. (See Tr.p. 84, Ln. 13 – 16).
- b. Counsel's failure to object has prejudiced Petitioner pursuant to State v. Langford, *Supra*.

States Constitution. Also see Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855 (1983).

- b. Counsel Robinson fail to quash the indictment on the ground that Petitioner was denied due process of law by reason of the fact that he was not afforded his requested preliminary hearing. (See Exhibit – M), See State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972).
  - c. Asst. Solicitor, James E. Hunter, based probable cause off of the arrest warrant that lacks any finding of a showing of probable cause within the arrest warrants affidavit. (See Tr.p. 11, Ln. 22 – 24).
  - d. The indictments does not state any essential facts that constitutes the offense charged.
  - e. The indictments fails to sufficiently apprise the Petitioner of what he must be prepared to meet.
  - f. The indictments does not apprise the Petitioner with reasonable certainty, of the nature of the accusation against him. See Russell v. United States, 369 U.S. 749, 764 82 S.Ct. 1038 (1962).
  - g. Counsel's failure to file a motion to quash indictments has prejudiced the Petitioner and has allowed the State to convict him on false evidence that did not go before the grand jury.
5. *Counsel's Failure to Object to the Solicitor's Manipulation of Court Docket in the Prosecution of Case.*
- a. Petitioner's Case History Report (see Exhibit – H), shows that his trial was rescheduled four times. First during the 18<sup>th</sup> – 22<sup>nd</sup> week of March 2013, the second was during the 8<sup>th</sup> – 12<sup>th</sup> week of April, 2013, the third was during 8<sup>th</sup> – 12<sup>th</sup> week of July, 2013, and the fourth was during the 20<sup>th</sup> – 25<sup>th</sup> week of May, 2013, to make sure Petitioner's case goes before Circuit Court Judge S.G. Lawton McIntosh, (see State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012)), who Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esquire, had an in chambers discussion with Judge McIntosh on or about April 12, 2013, about a Motion to Relieve Counsel that was filed by Counsel Robinson and two complaints that Petitioner filed with the Office of Disciplinary Counsel (ODC) and a Federal Habeas Corpus that was filed in Federal Court against Counsel Robinson and Asst. Solicitor, James E. Hunter. (See Tr.p. 84, Ln. 13 – 16).
  - b. Counsel's failure to object has prejudiced Petitioner pursuant to State v. Langford, *Supra*.

**6. Counsel's Failure to Advise the Court's Concerning an Existing Conflict of Interest.**

- a. On or about January 13, 2013, Petitioner filed a complaint with the OD-C and on or about February 12, 2013, Petitioner filed a petition for writ of habeas corpus in Federal Court pitting Petitioner Garvin against his Attorney, Scott D. Robinson, Esquire, and Asst. Solicitor, James E. Hunter, (see Exhibits – I and J), would certainly suggest divided loyalties and gives his attorney a personal interest in the way he conducted Petitioner Garvin's defense. An interest independent of, and in conflict with Petitioner Garvin's interest in obtaining a judgment of acquittal. Citing Douglas v. United States, 488 A.2d 121, 136 (D.C. App., 1985)(finding a conflict of interest when defendant filed a complaint against his retained counsel with the Office of the Bar Counsel).
- b. The Petitioner state's that there is an actual conflict where the interests of Counsel Robinson and Petitioner Garvin had diverged to such as to when Petitioner filed an ethical complaint against Counsel Robinson and Asst. Solicitor, James E. Hunter, (See Exhibits – I and J), to whereas, a disciplinary investigation and court proceedings has been initiated. Citing Blackmon v. United States, 146 A.3d 1074, 1078 (D.C. App., 2016).
- c. Petitioner's Sixth Amendment right to conflict – free representation has been violated pursuant to Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708 (1980).

**7. Counsel's Failure to Object to the Judge's Erroneous Jury Charge.**

- a. The erroneous jury charge had a substantial and injurious effect that attained a special significance in the minds of the jurors. There is a reasonable probability that Counsel's deficient performance in failing to object to the Judge's erroneous jury charge of the "Hand of One, is the Hand of All," has prejudiced Petitioner.
- b. The Judge's erroneous jury charge deprived Petitioner of fair notice of the charge and created a difference between the allegations in the indictments and the proof actually introduced at trial. The trial court erred in allowing the erroneous jury charge to amend Petitioner's indictment at trial by adding the additional language that state, "which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose," as a factor and has improperly amended the indictment that lacks putting Petitioner on notice, therefore, the court lacks Subject matter jurisdiction over Petitioner's case.
- c. The insufficient circumstantial evidence that insinuated that Petitioner Garvin and his co-defendant Jonathan Perez, were acting pursuant to a plan to drug traffick in heroin, together with the trial judge's erroneous jury charge as a whole, it can be determined that the jury could have been reasonably influenced in

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determining it's verdict. Citing Brecht v. Abrahamson, 507 U.S. 619, 623, 113 S.Ct. 1710 (1993).

- d. The State did not present any evidence that Petitioner committed an unlawful act that happened as a probable or natural consequence of the drug trafficking crime/acts or that it did actually happened and was done in carrying out the common plan and purpose of the drug trafficking crime, as the jury instruction's would state.
- e. The erroneous jury charge had a substantial and injurious effect that attained a special significance in the minds of the jurors, there is reason to believe that Counsel's deficient performance in failing to object to the Judge's erroneous jury charge did prejudiced Petitioner. (See Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008)(acknowledging the prominence of an erroneous charge when it arises in a supplemental instruction).
- f. See Petitioner's issue "E" for remaining argument of Hand of One, is the Hand of All.

**8. Counsel's Failure to Object During Solicitor's Summation.**

- a. Petitioner states that during Asst. Solicitor, James E. Hunter's closing arguments that he did vouch for the credibility of the State's witnesses. (See Tr.p. 12 - 13); (Tr.p. 256 - 257, Ln. 25, 1 - 3) and (Tr.p. 259, Ln. 2 - 6).
- b. Counsel Robinson rendered ineffective assistance by failing to object to Asst. Solicitor, James E. Hunter's comments that vouched for the credibility of the State's witnesses.
- c. Counsel Robinson's failure to object to comments constitute an error of law and are inherently Prejudicial, whereas Counsel should have moved for a Mistrial. Pursuant to Gilchrist v. State, 350 S.C. 221, 565 S.E.2d 281 (2002).

**9. Counsel's Failure to Investigate.**

- a. Petitioner hereby waived this issue.

**10. Counsel's Failure to File Motion For Release on Bail.**

- a. Petitioner hereby waived this issue.

**11. Counsel's Failure to be Present For Petitioner's Preliminary Hearing.**

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- a. On October 25, 2012, Petitioner had a requested preliminary hearing that was to be held. (See Exhibit – K).
- b. Counsel Robinson's abandonment at Petitioner's preliminary hearing to challenge the arrest warrants for a finding of probable cause, has failed to appear and has caused Petitioner's preliminary hearing to be waived and for him to be indicted without any evidence to make a showing of probable cause for his indictments to be true-billed.
- c. Counsel Robinson has admitted during the PCR hearing that he was negligent for his failure to appear. See *State v. Wheeler*, 259 S.C. 571, 577, 193 S.E.2d 515 (1972) ("a preliminary hearing is a critical stage in the criminal process, and that when there is a preliminary hearing an accused is entitled to the aid of counsel.") (also see *Coleman v. Alabama*, 399 U.S. 1, 7 – 10, 90 S.Ct. 1999, 2002 – 2004 (1970) (the Supreme Court held that the Sixth Amendment right to counsel applied to a preliminary hearing granted by State law).
- d. Counsel Robinson's failure to appear is abandonment and negligence on his part to have not represented Petitioner during the critical stages of his court proceedings, this, violating his due process.
- e. Counsel Robinson's failure to appear has deprived Petitioner of a requested preliminary hearing and this has prejudiced him.

**12. Effective Assistance of Counsel was Abandoned Entirely During the Critical Stages of Petitioner's State Proceeding und was Misrepresented During Trial.**

- a. Counsel Robinson's abandonment of Petitioner at his preliminary hearing during the critical stages of his State proceeding was done intentionally to deprive him of his requested preliminary hearing.
- b. Counsel Robinson has misrepresented to the Courts that he effectively represented Petitioner during his State proceeding and criminal trial.
- c. The record will show that Counsel Robinson file a Motion to Revoke Counsel, (see Exhibit – L), but then withdraw that motion after talks in chambers with Judge McIntosh and Asst. Solicitor, James E. Hunter. During Petitioner's *Jackson-Denno* hearing Counsel Robinson would fail to properly challenge the voluntariness of Petitioner's alleged confession statement, he would fail to request for a *Freak* hearing to challenge the arrest warrants, he would fail to utilize exculpatory evidence to impeach the State's witnesses that he had within his possession, and he would fail to object to the Solicitor vouching for the State's witnesses, (See Tr.p. 255, Ln. 12 – 13); (Tr.p. 256 – 257, Ln. 25, 1 – 3) and (Tr.p. 259, Ln. 2 – 6), just to name a few of his failures to show that Counsel

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Robinson misrepresented to the Court that he gave Petitioner effective assistance of counsel.

**13. Trial Counsel was Ineffective for Failing to Object to Solicitor's Bolstering of State's Witnesses.**

- a. Petitioner asks that the Court please refer to the above-mentioned issues No.(s): 8, of his Ineffective Effective Assistance of Counsel within this affidavit.

**14. Trial Counsel was Ineffective for Failing to Move for a Mistrial in Response to Bolstering.**

- a. Petitioner asks that the Court please refer to the above-mentioned issues No.(s): 8 and 13, of his Ineffective Effective Assistance of Counsel within this affidavit.

**15. Trial Counsel's Performance as a Whole was Deficient and Prejudicial.**

- a. Petitioner states that Counsel Robinson's fifteen failure as listed in his PCR application under his ineffective assistance of counsel issue as a whole had an cumulative effect that so prejudice him.
- b. The combination of Counsel Robinson's fifteen (15) failures had the effect of preventing Petitioner from receiving a fair trial. See. State v. Johnson, 334 S.E.2d 78, 83, 512 S.E.2d 795, 803 (1999).

**16. Trial Counsel was Ineffective for Failing to Object to the Redaction of an Inculpatory Statement.**

- a. Petitioner ask that this Court please refer to the issue of Involuntary Confession (F)(2) of this affidavit.

**17. Trial Counsel was Ineffective for Failing to Suppress Audio and Video Recordings.**

- a. Petitioner hereby waives this issue.

**18. Trial Counsel was Ineffective for Failing to Inform Petitioner of and to Utilize Exculpatory Evidence.**

- a. Petitioner ask that this Court please refer to above-mentioned issue No.: 2 of his Ineffective Assistance of Counsel that's within this affidavit as mentioned-above.

**19. Failure to Represent Client with Undivided Loyalty.**

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- a. Petitioner re-alleges and incorporates by reference each allegation of issue No.: 6 of Petitioner's Ineffective Assistance of Counsel within this affidavit as mentioned-above.

**20. Failure to Communicate with Client/Keep Client Informed.**

- a. Petitioner hereby waived this issue

**21. Failure to Preserve Client Confidence.**

- a. Petitioner hereby waives this issue.

**22. Failure to Request a Franks Hearing.**

- a. Petitioner re-alleges and incorporates by reference allegation of his Falsified Arrest Warrant issue, please refer to that issue below.

**23. Failure to Impeach the State's Witnesses.**

- a. Petitioner re-alleges and incorporates by reference each allegation of issue two of Petitioner's Ineffective Assistance of Counsel within this affidavit as mentioned-above.
- b. SLED Agent, Ashley Asbill, ATF Special Agent, David Pait, and Confidential Informant No.: 380, Fredrick Jerman, testimony at Petitioner's trial was material to determining Petitioner Garvin's guilt for trafficking in heroin. See *State v. Dean*, 427 S.C. 92, 828 S.E.2d 243 (2019)(citing *Giglio v. United States*, 405 U.S. 415, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).
- c. Petitioner states that the reliability of the State's witnesses, SLED Agent, Ashley Asbill, ATF Special Agent, David Pait, and Confidential Informant No.: 370, Fredrick Jerman, testimony was determinative of Petitioner being found guilty of drug trafficking in heroin and non-disclosure of exculpatory evidence to the jury affecting the credibility of the State's witnesses for impeachment purposes needs to be presented to the jury, whereas the evidence is material to Petitioner's innocence and would change the verdict that was entered in his trial on May 23, 2013.

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**C. Prosecutorial Misconduct:**

- 1. *Asst. Solicitor, James E. Hunter has Abused the Judicial Process of the Petitioner with his Official Lawlessness in the Enforcement of South Carolina Statute § 44-53 -370(e). He has Shown Bad Faith, has Prosecuted the Petitioner's Case Maliciously and Sadistically to Cause Harm to Him in the Following Manner:*

- a. Asst. Solicitor, James E. Hunter, brought forth an indictment without any probable cause or direct evidence to substantiate the true billing of that indictment, that he brought against Petitioner Garvin on December 6, 2012, in violation of S.C. Code Ann. § 14-7-1540 and 14-9-210. (See Tr.p. 11, Ln. 22 – 24).
  - b. Asst. Solicitor, James E. Hunter, has perverted Petitioner's requested preliminary hearing proceedings for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable cause to believe that a crime was committed for drug trafficking in heroin and has abused the grand jury process by not presenting any evidence that would amount to probable cause.
  - c. Asst. Solicitor, James E. Hunter, did knowingly misrepresent to the Court's that a grand jury was selected, drawn, and summons in accordance with S.C. Code Ann. § 14-7-1540 and 14-9-210 for collateral purposes.
  - d. Asst. Solicitor, James E. Hunter, did knowingly employ the use of unlawful grand jury procedures for the return and publication of Petitioner, John Garvin's true-billed indictments for collateral purposes.
  - e. Asst. Solicitor, James E. Hunter, did knowingly presented no substantial or rationally persuasive evidence on which to base the indictments for collateral purposes.
  - f. Asst. Solicitor, James E. Hunter, did knowingly file indictments that were returned solely as a result of misleading and the improper manner in which no such evidence was ever presented to the Grand Jury for collateral purposes.
  - g. Asst. Solicitor, James E. Hunter, did knowingly fail to bring forth an indictment that would put Petitioner on notice of the nature and cause of the accusation for the crime of drug trafficking in heroin that was charged for collateral purposes.
  - h. Asst. Solicitor, James E. Hunter did knowingly use the Grand Jury process that is not proper under the regular conduct of the proceedings to gain a collateral objective for collateral purposes.
  - i. Asst. Solicitor, James E. Hunter, did knowingly conspired with Petitioner, John Garvin's court-appointed pro-bono attorney, Scott D. Robinson for collateral purposes.
2. *Asst. Solicitor, James E. Hunter, Has Vouched for the Credibility of the State's Witnesses, that Have Committed Perjury During Petitioner's Trial in the Following Manner:*
- a. The Asst. Solicitor, James E. Hunter closing statement regarding the State's witnesses credibility was damaging to Petitioner Garvin, and did so vouch for the

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credibility of the State's witnesses by expressing or implying his personal opinion concerning the State's witnesses truthfulness. (See Tr.p. 255, Ln. 12 – 13); (Tr.p. 256–257, Ln. 25, 1–3) and (Tr.p. 259, Ln. 2–6).

- b. Asst. Solicitor, James E. Hunter's closing statements as a whole were clearly improper and objectionable.
- c. The evidence within the record, supports Petitioner's claim of prosecutorial misconduct on behalf of Asst. Solicitor, James E. Hunter's repeated vouching for the State's witnesses credibility of their testimony. *Id.*

**D. Conspiracy:**

**1. Asst. Solicitor, James E. Hunter, Has Conspired with Petitioner's Appointed Counsel, Scott D. Robinson to Deprive Petitioner of His Rights and Privileges Guaranteed By the Constitution in the Following Manner:**

- a. On or about April 5, 2013, Petitioner told Counsel Robinson to relieve himself as Counsel on his case during an attorney/client visit at Spartanburg County Detention Center. Then on April 10, 2013, Counsel Robinson would file his Motion to Relieve Counsel as requested with the Spartanburg County Clerk's Office and the Spartanburg County Solicitor's Office. (See Exhibit – L, Counsel Robinson's filed Motion to Relieve Counsel).
- b. A motion hearing date was scheduled for that motion to be heard April 12, 2013. "But that motion never made it before the court. It was just discussed in Chambers," with Asst. Solicitor, James E. Hunter, Counsel Robinson and Circuit Judge, R. Lawton McIntosh. (See Tr.p. 11, 12, Ln. 25, 1 – 4).
- c. On or about April 12, 2013, Petitioner's Court-Appointed Pro-bono Attorney, Scott D. Robinson, would then withdraw his Motion to Relieve Counsel and would then combined forces with Asst. Solicitor, James E. Hunter and entered into an extra-judicial conspiracy, that was discussed off the record in Judge McIntosh's chambers, to injure Petitioner Garvin by having him convicted of drug trafficking on May 23, 2013, then causing Petitioner to receive a sentence 25 years with a \$250,000.00 fine in the following manner:
  - i. Petitioner's Court-Appointed Pro-bono Attorney, Scott D. Robinson, conspired to and/or aid and abetted Asst. Solicitor, James E. Hunter, in committing extrinsic fraud upon the court, with their intentional perversion of the truth and Counsel Robinson's misrepresenting to Petitioner that testifying at his *Jackson-Denno* hearing would give away his defense strategy. Was done for the purpose of inducing the Petitioner to not testify and to surrender his legal right under *Jackson v. Denno*, 378

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U.S. 368, 84 S.Ct. 1774 (1964) and *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

- ii. The conspiracy was furthered by committing the overt act of extrinsic fraud upon the Court. Whereas, Asst. Solicitor, James E. Hunter, did submit to the Court, the perjured testimony of ATF Special Agent, David Pait and SLED Agent, Ashley Asbill, that was utilized to obstruct Petitioner's adversarial trial with the sole intent to prevail onto the courts for the appearance of presenting an alleged confession statement that was allegedly made by the Petitioner within the legal standard of *Jackson v. Denna, Supra.*, and *Miranda v. Arizona, Supra.*, and was placed into evidence at his criminal trial. Insomuch as, Counsel Robinson would purposely and deliberately fail to subject the State's case to adversarial testing for collateral purposes.
- iii. Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esq., did deliberately conspire to scheme to defraud the courts, knowingly and intentionally used SLED Agent, Ashley Asbill's falsified inculpatory confession statement that he alleged Petitioner Garvin made unto him, whereas, Petitioner Garvin has stated that he did not make it or even write the statement, but was mentally coerced into signing a blank statement that was later filled in by Officer Asbill himself. (See Tr.p. 214, Ln. 8 - 15); (see Exhibit - M).
- iv. In furtherance of the conspiracy as described above, Counsel Robinson would deliberately fail to present a defense of coercion and would fail to present the exculpatory evidence that he had within his possession to subject the State's case to adversarial test. (See Exhibit - E and F).

**E. Grand Jury Indictment Lacks Subject Matter Jurisdiction:**

**1. The Indictment Lacks Jurisdiction of the Petitioner's Case at the Time of the Indictment.**

- a. Asst. Solicitor, James E. Hunter, denied and deprived Petitioner of a requested preliminary hearing pursuant to S.C. Code Ann. § 22-5-320, (See Exhibit - K), and knowingly employed the use of unlawful procedures for the return and publication of Petitioner, John Garvin's true-billed indictments without probable cause.
- b. The Spartanburg County's Grand Jury had before it no substantial or rationally persuasive evidence on which to base a finding of probable cause for the indictment to be true-billed. (See Tr.p. 11, Ln. 22 - 24).

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- c. The indictment was returned solely as a result of the misleading and improper manner in which no such evidence was ever presented to the grand jury to establish probable cause.
  - d. The Spartanburg County Grand Jury was not selected, drawn, or impaneled in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210.
  - e. The Spartanburg County General Sessions Court was without jurisdiction, and Petitioner's requested demand for a preliminary hearing had been held. See State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972); also see Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).
  - f. Asst. Solicitor, James E. Hunter, has abused the process of the Spartanburg County's Grand Jury process in the selection and/or non-selection of grand jurors.
  - g. Petitioner contends that the State knowingly employed the use of unlawful procedures for the return and publication of its true-billed indictments. That Asst. Solicitor, James E. Hunter, did unlawfully impaneled a grand jury outside the jurisdiction of the Spartanburg County Court of General Sessions, and then willfully cause false and misleading information to be printed in the indictments.
  - h. Asst. Solicitor, James E. Hunter, and Spartanburg County Court of General Sessions failed to comply with statutory law jurisdictional in nature, specifying the manner and means for lawful return of true-billed indictments.
2. ***The Indictment Does Not State Facts to Constitute an Offense to Put Petitioner on Notice of What He is Being Charged.***
- a. The indictments does not contain the necessary elements of the offense to fully inform Petitioner of the nature of the accusation against him. See State v. Johnson, 314 S.C. 161, 442 S.E.2d 191 (1994)
  - b. The indictment's material variance between the charged offense and the proof of evidence presented at trial, deprived the court of subject matter jurisdiction and failed to put Petitioner on proper notice.
3. ***The Indictment Fails to Put the Petitioner on Notice of the True Nature and the True Actual Cause of Accusation to Legally Support the Conviction.***
- a. The phrasing of the indictment in the disjunctive does not provide Petitioner with the proper notice of the nature and the cause of the accusation, because such phrasing leaves the Petitioner uncertain as to which of the charged acts is being relied upon as the basis for the accusation against him.

**4. The Spartanburg County Court of General Sessions Had No Jurisdiction to Try Petitioner Until He Had His Requested Preliminary Hearing.**

- a. On July 18, 2012, Petitioner had requested for a preliminary hearing pursuant to S.C. Code Ann. §§ 17-23-160, 22-5-320 and Rule – 2, SCRCrimP, to determine whether sufficient evidence exists to warrant Petitioner's detention and trial. (See Exhibit – K).
- b. On October 25, 2012, Asst. Solicitor, James E. Hunter would waive Petitioner's preliminary hearing and bring forth an indictment on December 6, 2012, (see Exhibit – N and O), and base the indictment on the arrest warrant to establish probable cause to indict Petitioner of drug-trafficking.
- c. The Spartanburg County Court of General Sessions had no jurisdiction to indict Petitioner until after he had his requested preliminary hearing.

**F. The Judge's Erroneous Jury Charge of "The Hand of One, is The Hand of All".**

**1. The Judge's Erroneous Jury Charge Had a Substantial and Injurious Effect on the Jury.**

- a. The Judge's erroneous jury charge misled and influence the jury's verdict.
- b. The Judge's erroneous jury charge negated to the jury the charge of mere presence that should have eliminated any danger that the jury could be misled by the "Hand of One, Is the Hand of All," jury charge.
- c. The jury made a specific finding that Petitioner Garvin attempted to drug trafficking in heroin willfully, deliberately, and conspired to do so, the trial court concluded that it necessarily relied on the erroneous jury instruction.
- d. A searching review of the evidence presented at trial and the jury instructions will show the errors effect on the jury.
- e. The erroneous jury instruction leaves open the possibility that the jury convicted Petitioner on a legally impermissible theory, with the possibility of relying on the erroneous jury instruction is a Substantial and Injurious Effect or influence in determining the jury's verdict. Pursuant to Brecht v. Abrahamson, 507 U.S. 619, 113 S.Ct. 1710 (1993)(In Brecht, the court held that a state prisoner must prove that a constitutional error substantially influenced the jury's verdict in order to reverse a conviction).

**2. It Influenced the Jury's Verdict.**

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- a. The insufficient circumstantial evidence that was submitted to the jury, it insinuated that Petitioner Garvin and Perez were acting pursuant to a plan to drug trafficking in heroin, taken together with the trial judge's erroneous jury charge as a whole, it can be determined that the jury could have been influenced in determining it's verdict.
- b. The erroneous instructions make it likely that the jury convicted Petitioner Garvin on the impermissible theory.

**3. *It Shifted the Burden of Proof From the State to the Petitioner.***

- a. The Judge's erroneous jury charge of the "Hand of One, Is the Hand of All," is a fatal variance that deprived Petitioner of fair notice of the charge and creates a difference between the allegations in the indictment and the proof actually introduced at trial.
- b. The instructional language is improperly conclusive and improperly shifts the burden of Proof from the State to the Petitioner, the instructional language is inconsistent with the holdings of the United States Supreme Court in Sandstorm v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 199 (1979), in addition, to the holding of South Carolina Supreme Court in State v. Price, 289 S.C. 32, 344 S.E.2d 605 (1986).

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**4. *The Judge's Erroneous Jury Charge Was Unsupported by Any Evidence to Support It Being Charged to the Jury.***

- a. The evidence presented at Petitioner's trial did not prove that Petitioner Garvin was a knowingly involved participant in the commission of the criminal act, or that he had been involved in some planning and agreement among Perez and Frederick Jerman pertaining to the act.
- b. The State did not prove that Petitioner actively participated in the underlying drug-trafficking crime with advance knowledge that is required under the theory of accomplice liability.

**5. *The Petitioner Was Not Put On Notice That He Could Be Charged As An Accomplice Under The Judge's Jury Charge of "The Hand of One, Is The Hand of All."***

- a. The Judge's erroneous jury charge, constructively amended and/or impermissibly enlarge the indictment, that failed to put Petitioner on Notice that he maybe convicted guilty as an accomplice for drug trafficking, while being charged as a principal, did not receive adequate notice pursuant to South

Carolina Constitution Article I, §§ 3 & 14, in addition, to the Sixth and Fourteenth Amendment of the United States Constitution.

- b. Petitioner did not receive constitutionally adequate notice through trial testimony that he faced accomplice liability for drug trafficking in heroin.
- c. Petitioner did not learn he could face accomplice liability for drug trafficking in heroin until the trial court announced its decision finding him guilty under that theory.
- d. SCSO, Ken Hancock; SCSO, Robert Rosenberg; SCSO, B.J. Tillinghess; SCSO, Roger Luther; SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, testimony does not state that Petitioner Garvin knew of or was even involved with the drug transaction between the ATF Confidential Informant No. 380, Frederick Jerman and Jonathan Perez to put Petitioner on Notice that he may face accomplice liability for drug trafficking.
- e. Petitioner did not receive constitutionally adequate notice that he maybe liable as an accomplice to drug trafficking prior to the close of evidence.
- f. The Petitioner states that the State did not provide him with adequate notice of the State's accomplice liability theory, because the State did not present or pursue an accomplice liability theory during the presentation of the evidence and did not address it in their opening or closing argument.

6. ***The Judge's Jury Charge of "The Hand of One, Is The Hand of All" Is a Manifest Error Affecting Petitioner's Constitutional Rights.***

- a. The "Hand of One, is the Hand of All," is a manifest constitutional error that is a colorful and graphic phrase that had a substantial and injurious effect that influenced the jury's verdict at Petitioner's trial, based on insufficient circumstantial evidence that insinuated a showing that there was a joint criminal activity between Petitioner Garvin, Jonathan Perez, and Frederick Jerman.
- b. The Judge's jury instructions allowed the jury to convict Petitioner Garvin of felony drug trafficking for conduct that does not amount to that offense, their inclusion was and is a manifest constitutional error.

**G. Involuntary Confession:**

- 1. ***Officer Ashley Asbill Has Falsified an Inculpatory Statement that the Petitioner Did Not Make or Even Write and Was Mentally Coerced into Signing in the Following Manner:***

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- a. A manufactured document was admitted as substantive evidence against Petitioner, during his trial on May 21-23, 2013. (See Exhibit – M).
- b. The fabricated document should have been suppressed because it was the product of police trickery and coercion during a police interview.
- c. During the police interview ATF Special Agent, David Pait and SLED Agent, Ashley Asbill would misrepresent the pretense of that interview and would knowingly fabricate a tangible document against the Petitioner. A falsified inculpatory confession statement that Petitioner that did not make or even write and was mentally coerced into signing. (See Exhibit – M).
- d. The Petitioner was under the presumption that he was giving a statement to ATF Special Agent, David Pait, who is a federal agent, about drugs being distributed in North Jersey and Pennsylvania, whereas, the ATF has jurisdiction.
- e. SLED Agent, Asbill, would take the statement of Petitioner Garvin, having him to believe that he was signing his name to that statement about drugs being distributed in North Jersey and Pennsylvania.
- f. SLED Agent, Asbill would then place Petitioner's co-defendant's name on that statement and would state that Jonathan Perez refused to sign it. (See Exhibit – E). Then Agent Asbill, would take the blank statement that he tricked Petitioner into signing and would fill it in with his own words. (See Exhibit – M).
- g. On May 21, 2013, a *Jackson-Denno* hearing was conducted to determine whether Petitioner did make an alleged inculpatory confession statement knowingly and voluntarily concerning a drug trafficking crime that would be admissible at trial on the second indictment.
- h. ATF Special Agent, David Pait and SLED Agent, Ashley Asbill, testified on behalf of the State and described their roles in the taking of Petitioner's alleged confession statement.
- i. ATF Special Agent, Pait related that he administered a *Miranda* warning, (see Tr.p. 46, Ln. 3 – 8; Tr.p. 169 – 170, Ln. 7 – 25, 1 – 2), during Petitioner's *Jackson-Denno* hearing and trial.
- j. SLED Agent, Asbill would testify that he did not read Petitioner Garvin his *Miranda* rights. He would state ATF Special, Pait would read Petitioner his *Miranda* rights.

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- k. Petitioner's attorney would advised him to not testify at his *Jackson-Denno* hearing and would stipulate that Petitioner Garvin was read his *Miranda* rights, despite the fact that Petitioner did not sign a form waiving those rights and was not questioned during his *Jackson-Denno* hearing or at his trial about receiving his *Miranda* warning.
- l. The trial court did not conduct a lengthy colloquy to determine the voluntariness of Petitioner's alleged confession statement. The record will show that Petitioner never stipulated on record that he was properly *Mirandized*.
- m. At trial, Petitioner testify that he was coerced into signing a blank statement, (see Tr.p. 206, Ln. 20), and that the statement that was written by SLED Agent, Asbill, was not the statement that he gave to SLED Agent, Asbill. (See Tr.p. 207, Ln. 2 - 7).
- n. Petitioner also testified that he didn't know anything about what happened with what was going on between Petitioner's co-defendant, Jonathan Perez and the confidential informant, Fredrick Jerman and that all he knows is something about some other people and things up in North Jersey (see Tr.p. 201, Ln. 6 - 13) and Pennsylvania (see Tr.p. 213, Ln. 15 - 23).
- o. Petitioner's co-defendant, Jonathan Perez, testified that in terms of Petitioner Garvin's involvement with the drug transaction, he would state "No" that he didn't have any involvement, (see Tr.p. 231, Ln. 11 - 13), and that he did not know of [his] intentions of whatever [he was] gonna do at all. (see Tr.p. 231 Ln. 23 - 24), (see Tr.p. 234, Ln. 1 - 8). Perez also testified that he didn't give a statement at all to the police. (See Tr.p. 239 - 240, Ln. 21 - 28).
- p. The Petitioner was under the assumption that he was giving a statement to ATF Special Agent, Pait, who is an federal agent, about drug being distributed in North Jersey and Pennsylvania, whereas, the ATF has jurisdiction.

**2. The Trial Judge Erred in Admitting an Involuntary Confession that was Redacted to Hide the Facts About Police Misconduct in the Following Manner:**

- a. The State did not present sufficient evidence to satisfy the *corpus delicti* rule as expressed by the United States Supreme Court in *Opper v. United States*, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101(1954) and the South Carolina Supreme Court in *State v. Osborne*, 335 S.C. 172, 179-80, 516 S.E.2d 201, 204-05 (1999).
- b. The alleged confession was the fruit of an arrest that was unsupported by probable cause and evidence of opportunity to commit the crime charged was insufficient in order to establish the *corpus delicti*.

- c. The trial judge erred in finding that the State provided the trial court with sufficient independent evidence of the *corpus delicti* to support the State's conviction.
- d. The State did not provide any facts that corroborate facts contained in the confession; any facts that established the crime which corroborate facts contained in the confession; or facts under which the confession was made that show that the confession is trustworthy or reliable, taken together with the statement, that allow a reasonable inference that the crime of drug trafficking in heroin was committed.
- e. The details of Petitioner's alleged confession was not corroborated by SLED Agent, Ashley Ashbill and ATF Special Agent. David Pait's testimony during Petitioner's *Jackson-Demo* hearing and trial.
- f. There is testimony evidence in the record, that Petitioner made a claim that his confession was false and that he was coerced into signing it. See Tr.p. 214, Ln. 5 - 23).
- g. The testimony of SLED Agent, Abill and ATF Special Agent, Pait does not state or corroborate that Petitioner Garvin knew of or was even involved with the drug transaction.
- h. The State did not prove or corroborated that Petitioner actively participated in the underlying drug trafficking crime with advanced knowledge to provide sufficient independent evidence to support the trustworthiness of Petitioner's alleged confession to SLED Agent, Asbill and ATF Special Agent, Pait.
- i. The lack of independent evidence, taken together with the unincorporated alleged confession, does not present a reasonable inference that the crime of drug trafficking was committed by Petitioner Garvin.

**H. Falsified Arrest Warrant:**

**1. Spartanburg County Sheriff's Officer, Ken Hancock Has Falsified an Arrest Warrant by Fabricating the Weight of Evidence Knowingly and Intentionally with Reckless Disregard for the Truth in the Following Manner:**

- a. Officer Hancock, submitted four affidavits on July 17, 2012, three to Magistrate Judge, Jason T. Wall, and one affidavit submitted to Magistrate Judge, James B. Paslay, to obtain arrest warrants to arrest John Garvin and Jonathan Perez. (See Exhibits -P, Q, R, and S).
- b. Officer Hancock's affidavits and application for the arrest of John Garvin

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submitted on July 17, 2012, contained fabricated statements for an alleged drug trafficking crime that occurred on July 7, and July 17, 2012.

- c. Officer Hancock's arrest warrants affidavit deliberately fabricated the statement within the affidavit of arrest warrant numbers: N-158303 and N-158322, with reckless disregard for the truth. In addition, the weight of evidence was also fabricated in warrant number: N-158303 with reckless disregard for the truth within both arrest warrants that was presented to two different Magistrate Judges. (See Exhibits - P and Q).
- d. Arrest warrants numbers: N-158303 and N-158322 of the affidavits, contains no information by which the Magistrate Judges could discern the importance of the Petitioner, John Garvin, or any type of investigation that occurred to identify John Garvin as a suspect. (See Exhibits - P and Q).
- e. Officer Hancock's false statement identifying Petitioner Garvin as a principal for drug trafficking in heroin was materially false and was made in reckless disregard of the truth.
- f. Officer Hancock falsely represented that Petitioner Garvin did knowingly sell, deliver or bring into this State and/or possess ... heroin.
- g. Magistrate Judge, Jason T. Wall and Magistrate Judge, James B. Paslay, has completely abandon their judicial role and would infer that Officer Hancock had knowledge that Petitioner Garvin "did knowingly sell, manufacture, deliver, bring into this State [and/or] possess ... heroin."
- h. Officer Hancock's affidavits did not provide sufficiently reliable information for the issuing Judges to reasonably infer that the investigating officer obtain his information through a reliable source.
- i. Officer Hancock's affidavits contained no information to connect Petitioner Garvin to the crime of drug trafficking in heroin, other than the said statement that "WARRANT BASED ON POLICE INVESTIGATION."
- j. Officer Hancock's affidavits do not, directly or indirectly, provide any information by which a judge could discern how or why Petitioner Garvin even became a suspect to arrest for drug trafficking in heroin.
- k. The case report purportedly relied upon by Officer Hancock at Petitioner's PCR hearing was neither appended to nor summarized in the affidavit.
- l. In arrest warrants numbers: N-158303 and N-158322 of the affidavits, contains false misrepresented information with reckless falsity on which that determination was based.

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- m. Officer Hancock's warrants did not set forth any facts as to why Officer Hancock believed that John Garvin knowingly committed the crime of drug trafficking, nor was the information within the affidavits corroborated.

**I. Actual Innocence:**

**1. The Constitutional Errors in Petitioner's Trial has Deprived the Jury of Critical Exculpatory Evidence that Would Have Established Insufficient Evidence of Guilt and Would Have Also Proved Petitioner's Innocence in the Following Manner:**

- a. On May 23, 2013, a judgment was rendered and entered by the Spartanburg County General Sessions Court in a criminal matter then and there, that was pending in which Petitioner, John Garvin was a Defendant and the State of South Carolina was the Plaintiff in that case, by which it was adjudged that I, John Garvin was found guilty of drug trafficking.
- b. The essence of the State's case against the Petitioner was that video evidence, eye witness testimony, and an inculpatory statement established substantial circumstantial evidence.
- c. The State relied on the testimony of Spartanburg County Sheriff's Officer (SCSO), Lt. Ken Hancock; ATF Confidential Informant No. 380, Frederick Jerman; SCSO, B.J. Tillinghess; SCSO, Roger Luther; ATF Special Agent, David Pait and SLED Agent, Ashley Asbill as the State's witnesses.
- d. The State also relied heavily on an inculpatory statement and the testimony of Frederick Jerman, who was one of the State's witnesses who identified the Petitioner and testified to the Petitioner's presence at the scene of the crime.
- e. The Petitioner has at all times maintained his innocence. At trial, the essence of the defenses evidence was the testimony of the Petitioner, John Garvin and his co-defendant, Jonathan Perez as witnesses for the Defense.
- f. Since the completion of the trial and the entry of judgment on May 23, 2013 and the Appellate Court's affirming of the conviction on November 26, 2014. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice. Pursuant to S.C. Code Ann. § 17-27-20(A)(4). The Petitioner inadvertently discovered evidence that actually relates to his case on June 15, 2015. (See Exhibit – E).
- g. The after-discovered evidence refers to evidence of facts existing at the time of trial of which Petitioner was excusably ignorant to, because of being forced to rely on insidious counsel. Who would deliberately fail to present this exculpatory evidence to the Court and would pursue an unreasonable trial strategy that would fail to subject the State's case to adversarial testing

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at the expense of a different viable trial strategy.

- h. Then on July 16, 2019, Petitioner discovered additional evidence that can also prove his innocence and prove that fraud was committed upon the Court to prevent Petitioner from fully exhibiting and trying his case. (See Exhibit – F).
- i. On July 17, 2012, SLED Agent Abill claims to have conducted an interview with Jonathan Perez at the Spartanburg County Sheriff's Office following his arrest. Agent Asbill stated in his Report of Interview that, after Perez was read his *Miranda* warning, Perez stated that he wanted to cooperate with Agent Asbill, but stated that he refused to provide a written statement. (See Exhibit – E). ATF Special Agent, Pait would also make the same assertion in his July 17, 2012, Report of Investigation. (See Exhibit – T).
- j. At Petitioner's trial, Jonathan Perez testified that he didn't give a statement at all to police. (Tr.p. 239 – 240, Ln. 21 – 25, 1 – 8). I, John Garvin, would testify that the statement I gave related to events that transpired in Pennsylvania and New Jersey. (Tr.p. 203 & 213, Ln. 18 – 19 & 15 – 21).
- k. These facts supports the claim that information provided by the after-discovered evidence corroborate Petitioner's testimony that was presented at his trial and contradicts testimony given at trial by the State's witnesses SLED Agent, Asbill and ATF Special Agent, Pait.
- l. The after-discovered evidence in this case also establishes that the State has obtained a conviction by committing extrinsic fraud upon the Court with the subornation of perjury and the submission of a fabricated document upon the Courts.
- m. Asst. Solicitor, James E. Hunter, has engaged in a deliberately planned and carefully executed scheme to defraud by submitting to the Court a fabricated document and the suborn testimony of SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, who's testimony was perjury, that was utilized to obstruct Petitioner's adversarial trial with the sole intent to prevail upon the courts for the appearance of presenting and establishing the trustworthiness of an alleged confession statement that was allegedly made by the Petitioner to be within the legal standard of *Jackson v. Denno, Supra.*, and *Miranda v. Arizona, Supra.*, and was placed into evidence at his criminal trial to secure a conviction for drug trafficking in heroin.
- n. The evidence is such as will probably change the result if a new trial is granted.
- o. The evidence has been discovered since the trial on June 15, 2015 and on July 16, 2019.

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- p. The evidence could not have been discovered before the trial by the exercise of due diligence.
- q. The evidence is material to the issue.
- r. The evidence is not merely cumulative or impeaching.
- s. Perez's falsified statement, SLED Agent, Abill and ATF Special Agent, Pait Report of Investigation constitutes after-discovered evidence for a new trial. Pursuant to S.C. Code § 17-27-20(A)(4) (2014).
- t. In light of the above-specified information, Petitioner believes that it is extremely likely that, in the event of a new trial, it will be possible to obtain evidence and testimony corroborating the information found in the after-discovered evidence, conclusively repudiating the testimony of State's witnesses, SLED Agent, Asbill, ATF Special Agent, Pait, and Confidential Informant No.: 380, Frederick Jerman.

**J. Fraud:**

**1. The Solicitor and Petitioner's Trial Counsel Deliberately Conspired to Scheme to Defraud the Courts, Knowingly and Intentionally in the Following Manner:**

- a. The subornation of perjury and the submission of a fabricated document upon the courts by Asst. Solicitor, James E. Hunter, are actions which constitute extrinsic fraud.
- b. Asst. Solicitor, James E. Hunter and Petitioner's court-appointed attorney, Scott D. Robinson, Esquire, had conspired on or about April 12, 2013 to convict Petitioner Garvin of drug trafficking. By utilizing suborn testimony and a fraudulent document that was conceived by SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, from their inducement and coercive police interview of Petitioner, John Garvin on July 17, 2012.
- c. The extrinsic fraud at issue is the allegations of Petitioner, who states that he is the victim of an extra-judicial conspiracy orchestrated by Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esquire, on or about April 12, 2013, to keep exonerating evidence from the decision-makers.
- d. The act of perjury and the submission of a fabricated document is an intentional scheme to defraud the court that justifies the setting aside of Petitioner's conviction pursuant to Rule - 60(b)(3), SCRPC, due to extrinsic fraud.
- e. There is after-discovered evidence in this case that establishes that the State has obtained the conviction of Petitioner by committing fraud upon the court with

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the subornation of perjury and the submission of a fabricated document upon the courts. (See Exhibit – M).

f. The extrinsic fraud, misrepresentation, and other misconduct consisted in the following:

- i. Scott D. Robinson, Esquire, as the representative of the Petitioner was obtuse for the sake of deliberately failing to subject the State's prosecution to meaningful adversarial testing.
- ii. Counsel Robinson would deliberately pursue an unreasonable trial strategy at the expense of a different viable trial strategy, all while conspiring and/or aiding and abetting Asst. Solicitor, James E. Hunter in committing extrinsic fraud upon the court by utilizing suborn testimony and a fraudulent inculpatory statement that was written by SLED Agent Ashley Asbill, who would claim that Petitioner, John Garvin, made said statement.
- iii. SLED Agent, Ashley Asbill, testified under oath during Petitioner's *Jackson-Denno* hearing and at his trial, that Petitioner was not under duress and that he did not mentally coerce him into making a statement and that his statement was in response to the deal in which he was arrested for on July 17, 2012. (See Tr.p. 58, Ln. 4 – 5), (Tr.p. 178 – 179, Ln. 25, 1 – 5), (Tr.p. 179, Ln. 22 – 25) and ( Tr.p. 181, Ln. 11 – 19).
- iv. Such testimony was false and SLED Agent, Asbill knew it to be false, because on July 17, 2012, SLED Agent, Asbill, would claim to have conducted an interview with Jonathan Perez at the Spartanburg County Sheriff's Office following his arrest.
- v. Agent Asbill has stated in his Report of Interview that, after Perez was read his *Miranda* warning, Perez stated that he wanted to cooperate with Agent Asbill, but stated that he would refuse to provide a written statement. Which is marked as Exhibit – E. But during Petitioner's trial, Jonathan Perez testified that he didn't give a statement at all to police. (See Tr.p. 239 – 240, Ln. 21 – 25, 1 – 8).
- vi. Whereas, Petitioner testified that the statement he gave related to events that transpired in Pennsylvania and New Jersey. (See Tr.p. 203, 243, Ln. 18 – 19, 15 – 21).
- vii. ATF Special Agent, David Pait would testify under oath during Petitioner's *Jackson-Denno* hearing that Petitioner was not under duress and that he did not mentally coerce [Petitioner Garvin] into making a statement. (See Tr.p. 172 – 173, Ln. 25, 1 – 5). And that Petitioner's statement was in response to questions made by himself and Agent Asbill. (See Tr.p. 52, Ln. 18 – 21).

- viii. Such testimony was false and ATF Special Agent, David Pait, knew it to be false, because Agent Pait also made the same assertion that SLED Agent, Ashley Asbill, made in his July 17, 2012, Report of Investigation. Which is marked and attached as Exhibit – T.
- ix. Asst. Solicitor, James E. Hunter, did submit to the courts a fabricated document and the suborn testimony of SLED Agent Asbill and ATF Special Pait who's testimony was perjury, that was utilized to obstruct Petitioner's adversarial trial with the sole intent to prevail upon the courts for the appearance of presenting and establishing the trustworthiness of an alleged confession statement that was allegedly made by the Petitioner to be within the legal standard of *Jackson v. Denno, Supra.*, and *Miranda v. Arizona, Supra.*, then was placed into evidence at his criminal trial.
- x. The alleged inculpatory statement was admitted into evidence and redacted with no objections from Petitioner's trial attorney, Scott D. Robinson, Esquire.
- xi. The trial judge erred in admitting into evidence the falsified involuntary statement that was redacted (Tr.p. 72, Ln. 7 – 20), (Tr.p. 111 – 119) then presented into evidence to the jury (Tr.p. 180, Ln. 11 Exhibit No. 1 to secure a conviction.
- g. The record well show that the redacted statement was not submitted to the South Carolina Court of Appeals as Designation of Matter to be included in the Record on Appeal. Instead, it was submitted as if it was never redacted. See Exhibit – M (Record on Appeal, Exhibit No. 4, p. 184).
- h. In this regard, in assembling documents from the South Carolina Appellant Defense and the trial transcript in connection with requests for documents issued by Spartanburg County Clerk of Court's in the context of supplemental process, Petitioner has reviewed the record, which reveals that the conviction in question was secured by extrinsic fraud and misrepresentation. Specifically, the record demonstrates such conduct.
- i. Petitioner did not discover the extrinsic fraud until on or about June 18, 2015, when he received from his Appellant Attorney requested copies of the record on appeal, all the correspondence between him and the Appellant Defense Division, the courts Exhibit No.(s) 1 through 3 and the State's voir dire, as requested from his June 9, 2015 letter. See Exhibit – U (correspondence between Petitioner and his Appellant Attorney).
- j. Upon reviewing the requested documents the Petitioner, noticed that the alleged statement on page 184, which was submitted to the South Carolina Court of Appeals, was not the same alleged statement that was redacted then submitted to

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 SPARTANBURG COUNTY  
 CLERK OF COURT  
 W. COX  
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the jury during Petitioner's May 21 - 23, 2013 trial.

- k. The extrinsic fraud that was committed upon the court, has prevented the Petitioner from fully exhibiting and trying his case.
- l. The General Session's Court of Spartanburg County has failed to provide Petitioner his proper due process and proper judicial review.
- m. The violation of Petitioner's due process, makes it no longer equitable that his conviction should have prospective application, pursuant to Rule - 60(b)(4), SCRPC.

**K. Judicial Bias:**

1. ***The Trial Judge Had A Personal and Extra-Judicial Reasons that was Partial and Has Thrust-Upon A Conflict, on the Petitioner during his Trial Proceeding. Whereas, His Failure to Inquire Thoroughly Into the Factual basis of Petitioner's Dissatisfaction with His Trial Counsel is an Abuse of Discretion, When Petitioner Had Raised A Seemingly Substantial Complaint About His Trial Counsel.***
  - a. On or about April 12, 2013, Circuit Court Judge, R. Layton McIntosh, discussed in his chambers with Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esquire, a Motion to Relieve Counsel that was filed by Counsel Robinson on April 10, 2013, at the Petitioner's request on April 8, 2013, after an attorney/client visit at the Spartanburg County Detention Center.
  - b. Also discussed in Judge McIntosh's chambers was a complaint filed by Petitioner with the ODC and a Federal Habeas Corpus petition filed in Federal Court against his Attorney, Scott D. Robinson, Esquire, and Asst. Solicitor, James E. Hunter.
  - c. After discussing those complaints that was filed against both Scott D. Robinson, Esquire, and Asst. Solicitor, James E. Hunter, with Judge McIntosh. Counsel Robinson would withdraw his filed Motion to Relieve Counsel. (See Tr.p. 84, Ln. 13 - 16).
  - d. On May 21, 2013, Judge McIntosh would state on record so falsely that Counsel Robinson never filed a Motion to Relieve Counsel. His exact words were and I quote, "I met with Counsel in my chambers and I met with the State and Mr. Robinson and going back several weeks ago. At that point it was never a formal motion made. (See Tr.p. 8, Ln. 20 - 23). But then the very next day on May 22, 2013, Judge McIntosh would contradict himself and would state that Counsel Robinson's Motion to Relieve Counsel was withdrawn the last time that he was in Spartanburg. (See Tr.p. 84, Ln. 15 -

16).

- c. Judge McIntosh has stated on record that he was told by Asst. Solicitor, James E. Hunter and Attorney, Scott D. Robinson, Esquire, about the fact that Petitioner filed complaints against both those attorneys. (See Tr.p. 83, Ln. 11 - 21).
- f. Judge McIntosh, was acknowledged by Asst. Solicitor, James E. Hunter and Scott D. Robinson Esquire, about a potential conflict of interest between Petitioner, John Garvin, Scott D. Robinson, Esquire, and Asst. Solicitor, James E. Hunter.
- g. After Counsel Robinson would withdraw his Motion to Relieve Counsel, Petitioner would filed his own pro-se Motion to Relieve Counsel with the Spartanburg County Clerk's Office and with the Spartanburg County Solicitor's Office on May 12, 2013. (See Exhibit - X).
- h. On May 14, 2013, Judge McIntosh would deny Petitioner's Motion to Relieve Counsel without a hearing ever being held. (See Exhibit - H, Case History Report No.: 158303).
- i. On September 2, 2015, Petitioner would file a Motion for New Trial Based on After-discovered Evidence. (See Exhibit - V). On or about November 13, 2015, Judge McIntosh would deny Petitioner's Motion without a hearing ever being held. (See Exhibit - W).
- j. The April 12, 2013, discussion that was held in Judge McIntosh's chambers with Asst. Solicitor, James E. Hunter, and Attorney, Scott D. Robinson, Esquire, about Counsel Robinson's Motion to Relieve Counsel and the complaints Petitioner filed with the ODC and in Federal Court. Are personal and extra-judicial reasons that was partial and has thrust-upon a potential conflict of interest on the Petitioner during his trial proceeding.

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CLERK OF COURT  
SPARTANBURG COUNTY  
S.C.  
W. COX

**L. Denied Motion to Relieve Counsel:**

**1. The Trial Judge Abused His Discretion in Denying Petitioner's Motion to Relieve Counsel.**

- a. The trial judge in this case did not conduct a thorough investigation into the basis of Petitioner's Motion to Relieve his trial counsel, Scott D. Robinson, Esquire. (See Exhibit - X).
- b. The trial judge failed to engage in an adequate inquiry that was thoroughly into the factual basis of Petitioner's dissatisfaction with his trial counsel and into the

factual basis of any conflicts asserted by Counsel or whether Petitioner demonstrated good cause justifying substitute counsel.

- c. The trial court did not meet it's obligation to thoroughly inquire into the extent of the communications breakdown asserted by Petitioner's trial counsel or the basis of the asserted conflict by Petitioner and whether the internal ethical conflict had been resolved at all.
- d. The trial judge did not apply the three factors prong in State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991), to properly evaluate Petitioner's Motion to Relieve Counsel.
- e. The trial judge's failure to probe deeply into the factual basis of Petitioner Garvin's and Counsel, Scott D. Robinson's conflict seriously undermined his decision.

**M. Police Misconduct:**

*1. The Evidence that Was Provided at Petitioner's Trial, Derived From the Illegal Arrest and the Misrepresentation of the Facts that Was Provided by Spartanburg County Sheriff's Officer, Lt. Ken Hancock; ATF Special Agent, David Pait and SLED Agent, Ashley Asbill. And Would Not Have Come to Light If Not for the Illegal Actions of the Above-Mentioned Law Enforcement Officers. Whereas, the Evidence Has Been Obtained By the Exploitation of that Illegality in the Following Manner:*

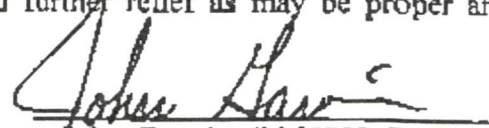
- a. Petitioner re-alleges and incorporates by reference each allegation of his Involuntary Confession Issue (F)(1)(a)-(p)(2)(a)-(i)) and his Fraud Issue (I)(1)(a)-(m)) of this affidavit as mentioned-above.
- b. There are serious pernicious forms of impermissible police conduct that due process concerns are implicated.
- c. An affirmative government misrepresentation strikes at the integrity of the State's prosecution against the Petitioner as a whole.
- d. Spartanburg County Sheriff's Officer (SCSO), Ken Hancock; SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, has defrauded the justice system in connection with their duties as Law Enforcement Officers.
- e. SCSO, Ken Hancock, has lied in his sworn arrest warrant affidavit that underpinned the arrest for Petitioner, John Garvin.
- f. SLED Agent, Asbill and ATF Special Agent, Pait deliberately delayed in reading

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SOUTH CAROLINA

Petitioner his *Miranda* rights so that they could obtain a statement from him.

- g. SLED Agent, Asbill and ATF Special Agent, Pait did submit to the courts a fabricated document and suborn testimony upon the Courts to be utilized to obstruct Petitioner's adversarial trial with the sole intent to prevail upon the Courts for the appearance of presenting and establishing the trustworthiness of an alleged confession statement that was allegedly made by the Petitioner.
- h. SCSO, Ken Hancock, falsely testified in his sworn arrest warrant affidavit with reckless disregard for the truth that Petitioner Garvin "did knowingly sell, deliver or bring into this State and/or possess ... heroin," as a principal for drug trafficking. Whereas, on the basis of that affidavit, Officer Hancock secured two arrest warrants from two different Magistrate Judge's. Those warrant's enabled the arrest of Petitioner, John Garvin, where falsified evidence was conceived by SLED Agent, Asbill and ATF Special Agent, Pait forming the basis of Petitioner's conviction.
- i. Petitioner asserts that a review of the totality of the circumstances with the application of the four case-law factors for attenuation will establish that attenuation was not even presented in Petitioner's case. See *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975).
- j. Petitioner case does presents highly uncommon circumstances in which gross police misconduct goes to the heart of the State's prosecution of the case.

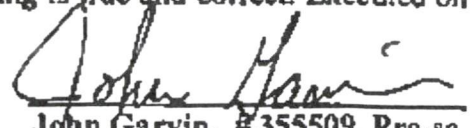
WHEREFORE, I respectfully ask for an Order granting reconsideration of judgment or to alter/amend judgment. The Petitioner's motion should be granted in the interest of justice to prevent a miscarriage of justice and for such other and further relief as may be proper and equitable. Executed on this 30<sup>th</sup> day of July, 2020.

  
 John Garvin, # 355509, Pro-se.  
 Leber Correctional Institution  
 136 Wilborn Avenue  
 Ridgeville, S.C. 29472

**AFFIDAVIT**

State of South Carolina )  
 ) s.s.:  
 County of Dorchester. )

I declare under the penalty of perjury that the foregoing is true and correct. Executed on this 30<sup>th</sup> day of July, 2020.

  
 John Garvin, # 355509, Pro-se.

FILED  
 AUG - 6 AM 9:00  
 CLERK OF COURT  
 CRIMINAL DIVISION  
 ANY COUNTY  
 ANY BOX

State of South Carolina )  
  ) s.s.:  
County of Dorchester. )

On July 30, 2020, John Garvin personally appeared before me, a Notary Public for the State of South Carolina in the County of Dorchester. Being duly sworn, John Garvin deposed and said that he is the Petitioner in the above action and that the facts in this affidavit are true.

John Garvin

Subscribed and Sworn to before me  
This 30<sup>th</sup> day of July, 2020

Lidia K. Bowser

Notary Public for South Carolina  
My commission expires 6-20-26

FILED  
2020 AUG -6 AM 9:06  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

# EXHIBIT

# I

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CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

RECEIVED

JAN 17 2013

OFFICE OF  
DISCIPLINARY COUNSEL

RECEIVED

JAN 17 2013

COMMISSION ON  
LAWYER CONDUCT

John Garvin

Spartanburg County Detention Center  
950 California Ave.

Spartanburg, S.C. 29303

January 13, 2013

ATTN: Ms. Lesley M. Coggiola,  
The Supreme Court of South Carolina  
Office of Disciplinary Counsel  
P.O. Box # 12159  
Columbia, S.C. 29211

RE: Filing a Complaint for Violation of my Constitutional Rights

Dear Ms. Coggiola,

I am an inmate currently being held at Spartanburg County Detention Center. I have been in this jail going on six months. And I have yet to have an Initial Appearance Hearing, A Preliminary Hearing, A Bond Hearing to receive a bond, or any type of hearing for the charges that I am being charged with.

The Solicitor, James E. Hunter, that's on my case has postpone my Preliminary Hearing on the 27<sup>th</sup> of July 2012, the 16<sup>th</sup> of August 2012, the 27<sup>th</sup> of September 2012, and then had it waived on the 25<sup>th</sup> of October 2012 for failure to appear. I have signed a court document on the 17<sup>th</sup> of July 2012, the day I was denied a Bond; stating that I would like to be present at my Preliminary Hearing. With that being said, the Solicitor and the courts negligence to notify the county jail that I am currently being held in. That John Garvin, has a preliminary hearing and needs to be in court on that day. And my lawyer didn't even attempt to appear on my behalf. This is a violation of my 14<sup>th</sup> Amendment right to due process.

My lawyer, Mr. Scott D. Robinson, has allowed this to happen. I have written to my lawyer more than once about my concern's with my preliminary hearing. But Mr. Robinson chooses to ignore my letters and my concern's about my case and only chooses to inform me about a plea from the solicitor. I have also asked my lawyer to put in a Bond Motion so that I may receive a bond and he has not done like I have requested. This lawyer has violated my 6<sup>th</sup> Amendment Right to adequate Counsel.

I would like to file a complaint against, Mr. James E. Hunter and Mr. Scott D. Robinson. For their unethical practice of the law concerning my case and them violating my constitutional rights.

I thank you for taking the time to read my complaint. Please get back to me about this matter. It would be greatly appreciated.

Sincerely,

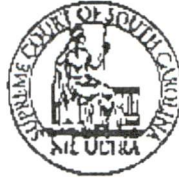
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# EXHIBIT K

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2020 AUG - 6 AM 9:08

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX



**The Supreme Court of South Carolina**  
**OFFICE OF DISCIPLINARY COUNSEL**

Lesley M. Coggola  
Disciplinary Counsel

Tiffany N. Richardson  
Staff Attorney

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1964

February 15, 2013

PERSONAL AND CONFIDENTIAL

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

RE: Lawyer: Scott David Robinson, Esquire  
Matter Number: 13-DE-L-0151

Dear Mr. Garvin:

We have received your complaint against Scott David Robinson, Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, sanctions may be imposed ranging from a confidential letter of caution or admonition, public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

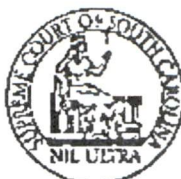
We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. Feel free to contact me if you have any questions or concerns.

Sincerely,

*Tiffany Richardson*  
Tiffany N. Richardson

TNR/dg



# The Supreme Court of South Carolina

## OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggola  
Disciplinary Counsel

William C. Campbell  
Assistant Disciplinary Counsel

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1964

April 23, 2013

### PERSONAL & CONFIDENTIAL

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

Re: Lawyer: Scott David Robinson, Esquire  
Case Number: 13-DE-L-0151

Dear Mr. Garvin:

This office has conducted an investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

This office is not authorized to give advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed at trial or on appeal using appropriate procedures.

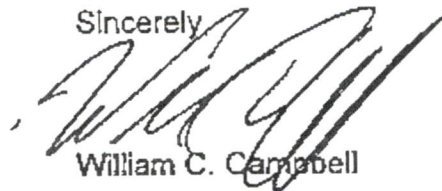
John Garvin  
April 23, 2013  
Page Two

In your letter of complaint, you allege that Scott David Robinson, Esquire failed to communicate with you about your case and has failed to diligently represent you in the case. As a result of your letter, this office conducted an investigation to ascertain if Mr. Robinson's conduct violated the Rules of Professional Conduct and the RLDE.

From our investigation, this office has determined that there is no evidence of any such lawyer misconduct on the part of Mr. Robinson arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence. In criminal cases, ineffectiveness of counsel does not necessarily involve misconduct. Such issues should be addressed in post-conviction relief (PCR) proceedings, and are not generally the subject of disciplinary proceedings before the Commission.

Accordingly, you are hereby notified of the intent of this office to dismiss your complaint pursuant to the provisions of Rule 19(d)(1) of RLDE. You may seek a review of this decision by an investigative panel of the Commission on Lawyer Conduct by filing a written request, which must be received in this office no later than May 23, 2013. If you request a panel review, the lawyer will be given an opportunity to respond. Your request and the lawyer's response, if any, will be considered at the next investigative panel meeting. You will then be notified of the panel's decision. Feel free to contact me if you have any questions regarding this process.

Sincerely

A handwritten signature in black ink, appearing to read "William C. Campbell", is written over the typed name.

William C. Campbell

WCC/

cc: Scott David Robinson, Esquire



**The Supreme Court of South Carolina**  
**OFFICE OF DISCIPLINARY COUNSEL**

Lesley M. Coggiola  
Disciplinary Counsel

William C. Campbell  
Assistant Disciplinary Counsel

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1964

May 9, 2013

PERSONAL & CONFIDENTIAL

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

Re: Lawyer: Scott David Robinson, Esquire  
Matter Number: 13-DE-L-0151

Dear Mr. Garvin:

We have received your request for review of the decision to dismiss your complaint in the above-referenced matter. Your request will be considered by an Investigative panel of the Commission on Lawyer Conduct. You will be notified of the Commission's decision. In the meantime, feel free to contact me if you have any questions or concerns.

Sincerely,

William C. Campbell

WCC/



**The Supreme Court of South Carolina**  
**COMMISSION ON LAWYER CONDUCT**

Deborah S. McKeown  
Commission Counsel

1015 Sumter Street, Suite 305  
Columbia, South Carolina 29201  
Telephone: (803) 734-2037  
Fax: (803) 734-0363

June 24, 2013

**PERSONAL & CONFIDENTIAL**

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

Re: NOTICE OF FINAL DISPOSITION  
Lawyer: Scott David Robinson, Esquire  
Case Number: 13-DE-L-0151

Dear Mr. Garvin:

An investigative panel of the Commission on Lawyer Conduct considered the results of the investigation in the above-referenced matter at your request. The panel concurred in the decision to dismiss this matter. Accordingly, the complaint in this matter is dismissed pursuant to the provisions of Rule 19(d)(1) of RLDE. As required by these rules, a copy of this letter is being sent to Mr. Robinson as notice of the dismissal of this complaint.

Sincerely,

  
Barbara W. Hinson  
Administrative Assistant

BWH/

cc: Scott David Robinson, Esquire

# EXHIBIT

# L

FILED

2020 AUG -6 AM 9: 08

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX



**The Supreme Court of South Carolina**  
**OFFICE OF DISCIPLINARY COUNSEL**

Lesley M. Coggiola  
Disciplinary Counsel

Tiffany N. Richardson  
Staff Attorney

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1984

February 15, 2013

PERSONAL AND CONFIDENTIAL

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

RE: Lawyer: James E. Hunter, Esquire  
Matter Number: 13-DE-L-0150

Dear Mr. Garvin:

We have received your complaint against James E. Hunter, Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, sanctions may be imposed ranging from a confidential letter of caution or admonition, public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. Feel free to contact me if you have any questions or concerns.

Sincerely,

*Tiffany Richardson*  
Tiffany N. Richardson

TNR/dlg



**The Supreme Court of South Carolina**  
**OFFICE OF DISCIPLINARY COUNSEL**

Lesley M. Coggola  
Disciplinary Counsel

William C. Campbell  
Assistant Disciplinary Counsel

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1964

March 29, 2013

**PERSONAL & CONFIDENTIAL**

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

Re: Lawyer: James E. Hunter, Esquire  
Case Number: 13-DE-L-0150

Dear Mr. Garvin:

This office has conducted an investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

This office is not authorized to give advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed at trial or on appeal using appropriate procedures.

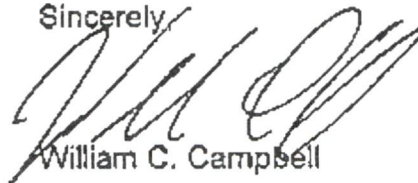
John Garvin  
March 29, 2013  
Page Two

In your letter of complaint, you allege that James E. Hunter, Esquire postponed your preliminary hearing until he could get a direct indictment, has denied you a bond, and will not accept your pro se motions. As a result of your letter, this office conducted an investigation to ascertain if Mr. Hunter's conduct violated the Rules of Professional Conduct and the RLDE.

From our investigation, this office has determined that there is no evidence of any such lawyer misconduct on the part of Mr. Hunter arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence.

Accordingly, you are hereby notified of the intent of this office to dismiss your complaint pursuant to the provisions of Rule 19(d)(1) of RLDE. You may seek a review of this decision by an investigative panel of the Commission on Lawyer Conduct by filing a written request, which must be received in this office no later than April 29, 2013. If you request a panel review, the lawyer will be given an opportunity to respond. Your request and the lawyer's response, if any, will be considered at the next investigative panel meeting. You will then be notified of the panel's decision. Feel free to contact me if you have any questions regarding this process.

Sincerely,

A handwritten signature in black ink, appearing to read 'William C. Campbell', is written over the typed name.

William C. Campbell

WCC/

cc: James E. Hunter, Esquire



**The Supreme Court of South Carolina**  
**OFFICE OF DISCIPLINARY COUNSEL**

Lesley M. Coggola  
Disciplinary Counsel

William C. Campbell  
Assistant Disciplinary Counsel

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1964

April 16, 2013

PERSONAL & CONFIDENTIAL

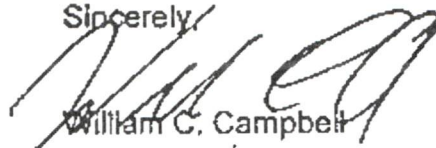
John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

Re: **Lawyer:** James E. Hunter, Esquire  
**Matter Number:** 13-DE-L-0150

Dear Mr. Garvin:

We have received your request for review of the decision to dismiss your complaint in the above-referenced matter. Your request will be considered by an investigative panel of the Commission on Lawyer Conduct. You will be notified of the Commission's decision. In the meantime, feel free to contact me if you have any questions or concerns.

Sincerely,



William C. Campbell

WCC/



COPY

The Supreme Court of South Carolina  
COMMISSION ON LAWYER CONDUCT

Deborah S. McKeown  
Commission Counsel

1015 Sumter Street, Suite 305  
Columbia, South Carolina 29201  
Telephone: (803) 734-2037  
Fax: (803) 734-0363

May 23, 2013

PERSONAL & CONFIDENTIAL

John Garvin  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, SC 29303

Re: NOTICE OF FINAL DISPOSITION  
Lawyer: James E. Hunter, Esquire  
Case Number: 13-DE-L-0150

Dear Mr. Garvin:

An investigative panel of the Commission on Lawyer Conduct considered the results of the investigation in the above-referenced matter at your request. The panel concurred in the decision to dismiss this matter. Accordingly, the complaint in this matter is dismissed pursuant to the provisions of Rule 19(d)(1) of RLDE. As required by these rules, a copy of this letter is being sent to Mr. Hunter as notice of the dismissal of this complaint.

Sincerely,

Barbara W. Hinson  
Administrative Assistant

BWH/

cc: James E. Hunter, Esquire

# **EXHIBIT**

**4**

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE - PCR

CASE NO. 2015-CP-42-04699

John Dwayne GARVIN, SCDCID #355509  
Applicant,

The STATE of South Carolina,  
Respondent,

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN** (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other

**IT IS ORDERED AND ADJUDGED:**  See formal order attached;  Statement of Judgment by the Court:

This matter came before this court on an application for post-conviction relief filed pursuant to *South Carolina Code Annotated Section 17-27-10 et seq.* The applicant proceeded on various allegations involving (1) ineffective assistance of appellate counsel; (2) ineffective assistance of trial counsel; and (3) prosecutorial misconduct.

Based upon the record of the case, the evidence presented at the evidentiary hearing held in this matter, the argument of the parties, and consideration of the applicable statutory and case law, this court finds that the applicant has failed to establish any deficient performance on the part of counsel and/or any prejudice resulting from counsel's performance *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989) or any other cognizable claim allowed under S. C. Code Ann. Section 17-27-20.

Applicant's request for **POST-CONVICTION** relief should be and **IS** therefore **DENIED** and the **APPLICATION DISMISSED WITH PREJUDICE**

Dated this the 9<sup>th</sup> day of **JULY, 2020.**

  
\_\_\_\_\_  
**PRESIDING JUDGE, J. DERHAM COLE**

This judgment was entered on the 10 day of July, 2020, and a copy mailed first class this day of July, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

**JOHN DWAYNE GARVIN**

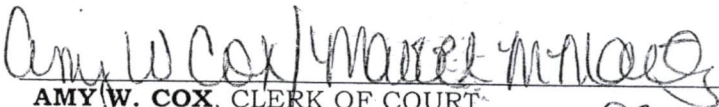
Liber Correctional Institution  
Ridgeville, South Carolina 29472

THE APPLICANT, appearing pro se

**JOHNNY E. JAMES, JR., Esq.**

Post Office Box 11549  
Columbia, South Carolina 29211

ATTORNEY FOR THE RESPONDENT

  
\_\_\_\_\_  
**AMY W. COX, CLERK OF COURT**

AMY W. COX  
CLERK OF COURT  
SPARTANBURG COUNTY

JUL 10 2020

FILED

# **EXHIBIT**

**5**

**John Garvin**  
**Lieber Correctional Institution**  
**136 Wilborn Avenue**  
**Ridgeville, S.C. 29472**

**ATTN: Ms. Linda D. Moffitt, Cir. Ct. Rptr.**  
**800 Belcher Road**  
**Spartanburg, S.C. 29316**

**RE: John Garvin v. State, Case No.: 2015-CP-42-4699, Requesting Audio Recording of PCR Hearing to Challenge Accuracy of PCR Transcript Due to Errors, Pursuant to Rule – 607(i), SCACR.**

Dear Ms. Moffitt:

On February 8, 2021, I received my PCR transcript from Appellant Defense via Lieber Correctional Institution’s internal mail staff. I write this letter in regards to challenging the accuracy of your transcription of my July 19<sup>th</sup>, and July 31<sup>st</sup>, 2019, Post-Conviction Relief (PCR) hearing that you transcribed.

Whereas, your transcription of my PCR hearing for the above-mention dates, is not a true, accurate, and complete transcription of my PCR hearing. The transcribed portions of the PCR hearing, by you are distorted and omits certain key testimony of Scott D. Robinson, Esquire; Asst. Solicitor, James E. Hunter; Spartanburg County Sheriff Officer, Lt. Ken Hancock; Matt Hutchins; and SLED Agent, Ashley Asbill, that are substantial and significant alterations and omissions to the testimony giving by the aforementioned witnesses at the PCR hearing.

The omissions distort the facts within your transcription of the PCR hearing transcript, which deprives me of a statutory “right to produce witnesses and proofs in [my] favor,” pursuant to S.C. Code Ann. § 17-23-60, your transcription specifically prejudices my ability to perfect my appeal and to prove that my constitutional rights were violated on my issues that I presented at that PCR hearing.

Now, due to the transcript errors within my PCR transcript. I am asking that you send me the audio recording and your steno notes of my July 19<sup>th</sup>, and 31<sup>st</sup>, 2019, PCR hearing, to correct the transcript errors, pursuant to Rule – 60(a), SCRCP and Rule – 607(i), SCACR.

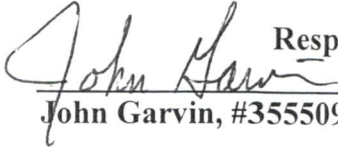
In addition, I also would like to know why I did not receive any notice of the request for the PCR transcript or any correspondences between you and the Respondents, concerning the transcription of the July 19<sup>th</sup>, and 31<sup>st</sup>, 2019, PCR hearing, pursuant to Rule – 207(a)(1) and Rule – 607(b), SCACR.

Because the failure of you and the Respondent to put me on notice of a request for the transcript, deprives me of notice and opportunity to object to the accuracy of the PCR transcript.

By copy of this letter, I am informing William H. Ray, Esquire, of the Office of the S.C. State Attorney General; the Court Reporter Manager, Desiree Allen; and Daniel E. Shearouse, Clerk of South Carolina Supreme Court, of my position to challenge the accuracy of my PCR hearing transcript.

I thank you for your cooperation and assistance in this matter.

**Dated: March 18, 2021**

 Respectfully,  
John Garvin, #355509, Pro-se

JG/

cc: William H. Ray, Asst. Att'y. General  
Hon. Daniel E. Shearouse, Clerk of S.C. Supreme Court  
Desiree Allen, Court Reporter Manager

# **EXHIBIT**

**6**

LINDA D. MOFFITT

Circuit Court Reporter  
800 Belcher Road  
Spartanburg, SC 29316

April 4, 2021

John Garvin  
Lieber Correctional Institution  
136 Wilborn Avenue  
Ridgeville, SC 29472

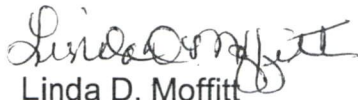
Dear Mr. Garvin:

In reference to your letter stating the transcript of your hearing is not a true, accurate and complete transcript, you will need to contact Karama Bailey at the Office of Court Administration.

As for your question concerning the request for the PCR transcript or correspondence, you would need to contact Johnny James in the Attorney General's office as to why he wouldn't have notified you.

Thank you.

Sincerely yours,



Linda D. Moffitt  
Circuit Court Reporter

cc: Karama T. Bailey, Esquire  
Office of Court Administration

# **EXHIBIT**

**7**

**John Garvin  
Lieber Correctional Institution  
136 Wilborn Avenue  
Ridgeville, S.C. 29472**

**ATTN: J. Derham Cole, Chief Admin. Judge  
The Seventh Judicial Circuit Court  
180 Magnolia Street, 2<sup>nd</sup> Floor  
Spartanburg, S.C. 29304-1744**

**RE: John Garvin v. State, Case No.: 2015-CP-42-4699, Requesting Audio Recording of PCR Hearing to Challenge Accuracy of PCR Transcript Due to Errors, Pursuant to Rule – 607(i), SCACR.**

Dear Judge Cole:

On February 8, 2021, I received my PCR transcript from Appellant Defense via Lieber Correctional Institution's internal mail staff. I write this letter in regards to challenging the accuracy of your transcription of my July 19<sup>th</sup>, and July 31<sup>st</sup>, 2019, Post-Conviction Relief (PCR) hearing that was transcribed.

Whereas, the transcription of my PCR hearing for the above-mention dates, is not a true, accurate, and complete transcription of my PCR hearing. The transcribed portions of the PCR hearing, by Linda D. Moffitt, Court Reporter, are distorted and omits certain key testimony of Scott D. Robinson, Esquire; Asst. Solicitor, James E. Hunter; Spartanburg County Sheriff Officer, Lt. Ken Hancock; Matt Hutchins; and SLED Agent, Ashley Asbill, that are substantial and significant alterations and omissions to the testimony giving by the aforementioned witnesses at the PCR hearing.

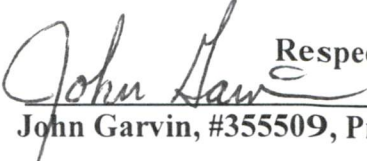
The omissions distort the facts within Ms. Moffitt's transcription of the PCR hearing transcript, which deprives me of a statutory "right to produce witnesses and proofs in [my] favor," pursuant to S.C. Code Ann. § 17-23-60, her transcription specifically prejudices my ability to perfect my appeal and to prove that my constitutional rights were violated on my issues that I presented at that PCR hearing.

Now, due to the transcript errors within my PCR transcript. I am asking that you grant me access the audio recording and your steno notes of my July 19<sup>th</sup>, and 31<sup>st</sup>, 2019, PCR hearing, to correct the transcript errors, pursuant to Rule – 60(a), SCRCP and Rule – 607(i), SCACR.

By copy of this letter, I have already informed William H. Ray, Esquire, of the Office of the S.C. State Attorney General; the Court Reporter Manager, Desiree Allen; and Daniel E. Shearouse, Clerk of South Carolina Supreme Court, in a letter to Ms. Moffitt dated March 18, 2021, of my position to challenge the accuracy of my PCR hearing transcript.

I thank you for your cooperation and assistance in this matter.

**Dated: March 23, 2021**

 **Respectfully,**  
**John Garvin, #355509, Pro-se**

JG/

cc: William H. Ray, Asst. Att'y. General  
Hon. Daniel E. Shearouse, Clerk of S.C. Supreme Court  
Desiree Allen, Court Reporter Manager

# **EXHIBIT**

**8**

