

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**Dec 23 2021**

**S.C. SUPREME COURT**

**APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
J. Derham Cole, Circuit Court Judge**

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**Lower Court Case No.: 2015-CP-42-04699  
Case No. 2020 – 001418**

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John Garvin..... Petitioner,

v.

The State of South Carolina..... Respondent.

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**AMENDED PETITION FOR WRIT OF CERTIORARI**

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John Garvin,  
Pro-se

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

*SELF-REPRESENTATION*

**TABLE OF CONTENTS**

**QUESTION PRESENTED**.....ii

**STATEMENT OF CASE**.....1

**STATEMENT OF FACTS**.....1

**STANDARD OF REVIEW**.....3

**ARGUMENT**.....3

    I.    Whether the PCR Court erred in failing to grant Petitioner, a new trial under circumstances where: (1) “there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction in the interest of justice,” that the PCR Court failed to rule on pursuant to S.C. Code Ann. §§ 17-27-20(A)(4); (2) 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 proved his innocence’s; and (3) the prosecutorial misconduct emanating from Petitioner’s State proceedings denied him the right to a fair trial, by committing extrinsic fraud upon the court when presenting a falsified inculpatory confession statement as evidence and failing to correct the false testimony given by State witnesses about the trustworthiness of the alleged confession statement, then vouching for the credibility of the State witnesses in his closing argument was in violation of *Napue v. Illinois*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150 (1972) and *Donnelly v. Dechristoforo*, 416 U.S. 637 (1974).....3

    II.   Whether the trial courts denial of Petitioner’s Motion to Relieve Counsel and his objections to appointed counsel’s representation of him during his trial, did place an actual conflict of interest upon Petitioner when he filed a complaint with the Office of Disciplinary Counsel and a complaint in the Federal District Court against his Court-Appointed Counsel and the prosecuting Assistance Solicitor prior to trial, did constitutionally prejudiced his right to effective assistant of counsel and to a fair trial as guaranteed to him under the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina State Constitution Article One, §§ 3 and 14, and pursuant to *Cuyler v. Sullivan*, 446 U.S. 335 (1980) and *United States v. Cronin*, 466 U.S. 648 (1984).....16

**CONCLUSION**.....28

## QUESTIONS PRESENTED

This is a case that involves questions of exceptional importance, concerning the violation of the Petitioner's constitutional rights, by the arresting police officers, the prosecuting assistance solicitor, and the attorney, who constructively denied Petitioner effective assistance of counsel. The questions are presented as followed below:

- I. Whether the PCR Court erred in failing to grant Petitioner, a new trial under circumstances where: (1) "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction in the interest of justice," that the PCR Court failed to rule on pursuant to S.C. Code Ann. §§ 17-27-20(A)(4); (2) 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 proved his innocence's; and the prosecutorial misconduct emanating from Petitioner's State proceedings denied him the right to a fair trial, by committing extrinsic fraud upon the court when presenting a falsified inculpatory confession statement as evidence and failing to correct the false testimony given by State witnesses about the trustworthiness of the alleged confession statement, then vouching for the credibility of the State witnesses in his closing argument was in violation of *Napue v. Illinois*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150 (1972) and *Donnelly v. Dechristoforo*, 416 U.S. 637 (1974).
- II. Whether the trial courts denial of Petitioner's Motion to Relieve Counsel and his objections to appointed counsel's representation of him during his trial, did place an actual conflict of interest upon Petitioner when he filed a complaint with the Office of Disciplinary Counsel and a complaint in the Federal District Court against his Court-Appointed Counsel and the prosecuting Assistance Solicitor prior to trial, did constitutionally prejudiced his right to effective assistant of counsel and to a fair trial as guaranteed to him under the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina State Constitution Article One, §§ 3 and 14, and pursuant to *Cuyler v. Sullivan*, 446 U.S. 335 (1980) and *United States v. Cronin*, 466 U.S. 648 (1984).

## **STATEMENT OF THE CASE**

The following pertinent procedural and factual history is necessary to understand the issues presented by Petitioner for Post-Conviction Relief. On July 17, 2012, Petitioner, John Garvin, was falsely arrested without a proper finding of probable cause for the crime of drug trafficking in heroin (S.C. Code § 44-53-370(e)). (See App. pp. 1122, 1125). Petitioner was convicted as charged on Indictment No. 2012-GS-42-5979 after a jury trial that was held on May 21-23, 2013, in Spartanburg County Court of General Sessions and was sentenced to a term of twenty-five (25) years in prison and fined \$200,000.00 (McIntosh, L. at trial and sentence). (See App. p. 299).

A Notice of Appeal was timely filed, on June 6, 2013, (see App. pp. 300 – 301), the South Carolina Court of Appeals granted Petitioner permission to appeal *informa pauperis*. On October 10, 2013, Indictment No. 2012-GS-42-5978 was dismissed, due to a lack of probable cause and video evidence that proves his innocence. On November 24, 2014, the Remittitur was issued on Indictment No.: 2012-GS-42-5979, affirming Petitioner's conviction. (See App. pp. 302 – 304).

An application for Post-Conviction Relief (PCR) was dated and submitted to the Spartanburg County Court of Common Pleas on October 28, 2015 and was filed on November 18, 2015. (See App. pp. 358 – 368). The State filed its return to Petitioner's PCR application on July 5, 2016. (See App. pp. 369 – 378). An evidentiary hearing into the matter was held on July 19, 2019, and was continued on July 31, 2019, at the Spartanburg County Courthouse. An order was filed on July 10, 2020, denying Petitioner post-conviction relief with prejudice. (See App. pp. 859 – 886). On August 6, 2020, Petitioner filed a Rule – 59(e), Motion for Reconsideration to Alter/Amend Judgment with supporting affidavit. (See App. pp. 887 – 1095). On September 11, 2020, the PCR Court would deny Petitioner's Rule – 59(e), Motion. (See App. p. 1096). On October 22, 2020, Petitioner would file a Notice of Appeal in this Court for a Petition for Writ of Certiorari. Petitioner now presents this Petition for Writ of Certiorari before this Court for proper judicial review of the PCR Court's denial of his PCR application.

## **STATEMENT OF FACTS**

A fraudulent investigation and an unlawful seizure by arrest, detention, prosecution, conviction and incarceration by Spartanburg County Sheriff Officer, Ken Hancock, and Asst. Solicitor, James E. Hunter, acting together and in concert, with Scott D. Robinson, Esquire; SLED Agent, Ashley Asbill; and ATF Special Agent, David Pait, violated the procedural and substantive rights guaranteed to Petitioner by the Fourth and Fourteenth Amendments to the United States

Constitution and to rights secured under the laws and Constitution of South Carolina Article One §§ 3, 10, and 22.

On July 17, 2012, Petitioner was falsely arrested and was charged with drug trafficking in heroin. (See App. pp. 1122, 1125). From that illegal arrest a fabricated involuntarily Confession statement was conceived by SLED Agent, Ashley Asbill. (See App. p. 1100). A bail hearing was held to whereas, Petitioner was denied bail and had requested a preliminary hearing, (see App. p. 1032). Scott D. Robinson Esquire, was appointed to represent Petitioner for the criminal charges on or about August 28, 2012. (See App. pp. 975 – 976). The requested preliminary hearing was scheduled for an October 25, 2012, hearing by Asst. Solicitor, James E. Hunter, who would move before the Court on the day of the scheduled preliminary hearing for the Court to waive Petitioner's preliminary hearing for failure to appear. (See App. p. 11, Ln. 15 – 19).

On January 13, 2013, Petitioner would file a complaint against Asst. Solicitor, James E. Hunter and his Court-Appointed Trial Counsel, Scott D. Robinson, Esq., with the Office of Disciplinary Counsel (ODC), (see App. pp. 1003 – 1004), for depriving Petitioner of a requested preliminary hearing in violation of his due process. Then on February 12, 2013, Petitioner would file a petition for writ of habeas corpus in Federal District Court. (See App. pp. 1006 – 1018).

On or about April 9, 2013, during an attorney legal visit at Spartanburg County Detention Center, Petitioner asked Counsel Robinson to relieve himself as Counsel. Inasmuch as Counsel Robinson would file a motion to relieve himself as Counsel on April 10, 2013, with the Spartanburg County Clerk of Court and with the Solicitor's Office. (See App. p. 1036). But then he would withdraw that motion after talks in chambers with Asst. Solicitor, James E. Hunter and Circuit Judge, R. Lawton McIntosh, on or about April 12, 2013, (see App. pp. 11 – 12, Ln. 25, 1-4), to orchestrate an extra-judicial conspiracy to keep exonerating evidence from the decision-makers.

Scott D. Robinson, Esq., as the representative of the Petitioner, abandoned him at his requested preliminary hearing and deliberately failed to subject the State's prosecution of him to meaningful adversarial testing. Whereas, constructively denying Petitioner effective assistance of counsel. Counsel Robinson would conspire and/or aid and abett Asst. Solicitor, James E. Hunter, in committing extrinsic fraud upon the court by knowingly submitting a fabricated document, (see App. p. 1100), and the false 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 inculpatory confession statement that was allegedly made by the Petitioner, John Garvin. The solicitor would closed by vouching for the credibility of three State witnesses in his closing rebuttal argument. (See App. pp. 254 – 259, Ln. 10 – 13). Petitioner was convicted as an accompish and was sentenced to a term of twenty-five (25) years in prison and fined \$200,000.00. (see App. p. 299).

On June 15, 2015, Petitioner inadvertently discovered evidence that actually relates to his case. (See App. p. 1097). Then on July 16, 2019, Petitioner discovered additional evidence that can also prove his innocence and prove that extrinsic fraud was committed upon the Court to prevent Petitioner from fully exhibiting and trying his case. (See App. p. 1098). Evidence of material facts, not previously presented and heard, (see App. pp. 1097 – 1098), that requires vacation of the conviction or sentence in the interest of justice, pursuant to S.C. Code Ann. §§ 17-27-20(A)(4) or 17-27-45(C).

### **STANDARD OF REVIEW**

This Court’s original jurisdiction sits as both the finders of facts and finders of law. See S.C. Code Ann. § 14-3-340; also see *Sanford v. S.C. State Ethics Comm’n.*, 385 S.C. 483, 497, 685 S.E.2d 600, 607, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009). The burden is on the applicant in a PCR proceeding to prove the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). On certiorari in a PCR action, this Court applies an “any evidence” standard of review. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Accordingly, the Court will affirm if any evidence of probative value in the record exists to support the finding of the PCR court. *Id.* at 119, 386 S.E.2d at 626.

### **ARGUMENT**

#### **I.**

**THE PCR COURT ERRED IN FAILING TO GRANT PETITIONER, A NEW TRIAL UNDER CIRCUMSTANCES WHERE: (1) “THERE EXISTS EVIDENCE OF MATERIAL FACTS, NOT PREVIOUSLY PRESENTED AND HEARD, THAT REQUIRES VACATION OF THE CONVICTION ... IN THE INTEREST OF JUSTICE,” THAT THE PCR COURT FAILED TO RULE ON, PURSUANT TO S.C. CODE ANN. § 17-27-20(A)(4); (2) 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 PROVED HIS INNOCENCES; AND (3) THE PROSECUTORIAL MISCONDUCT EMANATING FROM PETITIONER’S STATE PROCEEDINGS DENIED HIM THE RIGHT TO A FAIR TRIAL, BY COMMENTING EXTRINSIC FRAUD UPON THE COURT WHEN**

**PRESENTING A FALSIFIED INCUPLATORY CONFESSION STATEMENT AS EVIDENCE AND FAILING TO CORRECT THE FALSE TESTIMONY GIVEN BY STATE WITNESSES ABOUT THE TRUSTWORTHINESS OF THE ALLEGED CONFESSION STATEMENT, THEN VOUCHING FOR THE CREDIBILITY OF THE STATE WITNESSES IN THE SOLICITOR'S CLOSING ARGUMENT WAS IN VIOLATION OF NAPUE v. ILLINOIS, 360 U.S. 264 (1959), GIGLIO v. UNITED STATES, 405 U.S. 150 (1972) AND DONNELLY v. DECHRISTOFORO, 416 U.S. 637 (1974).**

**A. Actual Innocence:**

**A Wrongfully Convicted Defendant Who Demonstrates Actual Innocence Has An Independent Basis For Relief Under The United States Constitution, The South Carolina Constitution, and Federal and State Law**

The continued incarceration of a convicted defendant who demonstrates that he is actually innocent of the crime of which he was convicted is contrary to fundamental notions of justice and fair treatment that are enshrined in the United States and South Carolina Constitutions. A growing body of authority recognizes that continued incarceration of such a defendant violates the defendant's right to due process of law. See U.S. Const. Amends. V, XIV § 1; S.C. Const. Art. I, § 3. Continued imprisonment of an actually innocent defendant also constitutes cruel and unusual punishment. See U.S. Const. Amend. VIII; S.C. Const. Art. I, § 15.<sup>1</sup> These provisions of the United States and South Carolina Constitutions mandate a remedy for any actually innocent incarcerated defendant.

**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 His Innocence.**

The right of an accused to effective assistance of counsel in his defense is fundamental to the trial process and transcends a mere evidentiary ruling. An accused's right to relieve counsel "is either respected or denied; it's deprivation cannot be harmless." *Mckaskle v. Wiggins*, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944 (1984). As such, the error is structural in that it is "so basic to a fair trial that [its] infraction can never be treated as harmless error." *Fulminante*, 499 U.S. at 289, 111 S.Ct. 1246 (quoting *Chapman*, 386 U.S. at 23, 87 S.Ct. 824).

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<sup>1</sup> The "cruel **or** unusual punishment" clause of the South Carolina Constitution is disjunctive, and thus provides greater protection to defendants just like the State of Michigan's Constitution, than the "cruel **and** unusual" punishment clause the Eighth Amendment of the United States Constitution. *Cf. People v. Bullock*, 440 Mich. 15, 485 N.W.2d 866 (1992)(The Michigan Supreme Court explained that the ban under the state constitution of "cruel **or** unusual" punishments was broader than the proscription of "cruel **and** unusual" punishments in the Eighth Amendment of the United States Constitution.)

In this case, the trial court denied Petitioner’s Motion to Relieve Counsel, thus, depriving Petitioner of his right to relieve Scott D. Robinson, Esquire, as his attorney, who would constructively deny him effective assistance of counsel at his trial. The deprivation of Petitioner’s sixth amendment constitutional right to effective assistance of counsel in his defense and his Fourteenth Amendment right to due process, due to the prosecutorial misconduct at his trial cannot be harmless and, as such, are constitutional errors that have occurred during Petitioner’s trial in violation of *Cuyler v. Sullivan*, 446 U.S. 335 (1980), *United States v. Cronin*, 466 U.S. 648 (1984), *Napue v. Illinois*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150 (1972) and *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974).

**a. Newly Discovered Evidence**

“The PCR Act provides that “[a]ny person who has been convicted of, or sentenced for, a crime and who claims ... that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice” is entitled to seek post-conviction relief. S.C. Code Ann. § 17-27-20(A)(4) (2014). Thus, by its plain language, the PCR Act affords “any person” the ability to seek post-conviction relief on the basis of newly discovered evidence.” quoting *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014). If the newly discovered evidence is favorable to the Petitioner, then the court must order appropriate relief, which may include a new trial. See S.C. Code Ann. § 17-27-80. A petition filed pursuant to this statutory authority is considered a petition for post-conviction relief. See S.C. Code Ann. §§ 17-27-20(A)(4) and 17-27-45(C).

A Petitioner claiming that he is entitled to relief on the basis of newly discovered evidence must establish the following:

- (1) would probably change the result if a new trial is had;
- (2) has been discovered since trial;
- (3) could not have been discovered before trial;
- (4) is material to the issue of guilt or innocence; and
- (5) is not merely cumulative or impeaching.

*Jamison v. State*, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (citing *McCoy v. State*, 401 S.C. 363, 368 n. 1, 737 S.E.2d 623, 625 n.1 (2013) (quoting *Clark v. State*, 315 S.C. 385, 387 – 88, 434 S.E.2d 266, 267 (1993)). Regarding the first factor that is most critical, the defendant must raise a strong presumption that the result at any subsequent trial in all probability would be different. See *Clark*, 315 S.C. at 388. In determining whether the newly discovered evidence will probably produce a different result, the post-conviction court, should have consider the “weight and quality”

of Petitioner's newly discovered evidence, which a reasonable trier of fact would give the proffered evidence and the probable impact of it in light of all the facts and circumstances shown at the original trial of the case. *Id.* at 388.

In this case, since the completion of Petitioner's trial and the entry of judgment on May 23, 2013, and the appellate courts affirming of Petitioner's conviction on November 26 2014. There exists evidence of material facts, not previously presented and heard, (see App. pp. 1097 – 1098), that requires vacation of the conviction or sentence in the interest of justice, pursuant to S.C. Code Ann. §§ 17-27-20(A)(4) or 17-27-45(C), evidence that Petitioner inadvertently discovered that actually relates to his case was discovered on June 15, 2015. (See App. p. 981). Then again on July 16, 2019, Petitioner discovered additional evidence that can also prove his innocence and prove that extrinsic fraud was committed upon the Court to prevent Petitioner from fully exhibiting and trying his case. (See App. pp. 982 – 983).

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 at the expense of a different viable trial strategy. (See App. p. 485).

During Petitioner's state proceedings, his trial counsel, Scott D. Robinson, received from Asst. Solicitor, James E. Hunter, discovery evidence on November 8, 2012, and on December 10, 2012, (see App. pp. 978 – 979), after filing a Motion for Discovery Evidence on or about October 19, 2012. When Counsel Robinson, was given the discovery evidence while the case was pending in the Spartanburg County Court of General Sessions, it included information that was not utilized by Counsel Robinson at Petitioner's trial, namely two Report of Interview by SLED Agent, Ashley Asbill, (1) stating that he "conducted an interview with subject Jonathan Perez at the Spartanburg County Sheriff's Office following his arrest." (see App. p. 1097). And (2) stating that he "conducted an interview with subject Jonathan Garvin at the Spartanburg County Sheriff's Office following his arrest." (see App. p. 1098).

The evidence, is two Report of Interviews by SLED Agent Asbill, shows that extrinsic fraud upon the Court was committed by the State and SLED Agent Asbill, who fabricated those two documents, in all actuality three fabricated documents, to the State that was in Petitioner's December 10, 2012, discovery evidence, (see App. p. 979), by claiming to have conducted an

interview with Jonathan Perez at the Spartanburg County Sheriff's office following Perez's arrest. (See App. p. 1097). The second, one is a statement claiming that Petitioner made a signed confession to him that he wrote and claims that Petitioner was too nervous to write himself. (See App. p. 1100). The third, one claims to have conducted an interview with Jonathan Garvin at the Spartanburg County Sheriff's office following Jonathan Garvin's arrest. (See App. p. 1098). Agent Asbill stated in those two Report of Interviews that, after Jonathan Perez and Jonathan Garvin was read *Miranda* warnings, Perez/Garvin stated that each one wanted to cooperate with Agent Asbill, but stated they both would refuse to provide a written statement. (See App. pp. 1097 – 1098). ATF Special Agent, David Pait, would also make the same assertion in his July 17, 2012, Report of Investigation. (See App. pp. 1070 – 1071).

But at Petitioner's trial, Jonathan Perez testified that he didn't give a statement at all to police. (See App. pp. 239 – 240, Ln. 21 – 25, 1 – 8). Whereas, Petitioner testified that the statement he gave related to events that transpired in Pennsylvania and New Jersey. (See App. pp. 203 & 213, Ln. 18 – 19 & 15 – 23). Not to mention, the fact that Petitioner testified that he was tricked/coerced into signing a blank statement by Agent Asbill that was later filled in by Agent Asbill. (See App. pp. 203, 206, 207, 213, Ln. 18 – 23, 20, 2 – 7, 15 – 23, 2 -15). The question is why would Petitioner sign an inculpatory statement, but would refuse to sign a statement that talks about drugs being distributed in New Jersey and Pennsylvania. Had Counsel Robinson utilized this evidence at Petitioner's trial, he would have cross-examined, Agent Asbill and ATF Special Agent Pait, regarding how those statements came to be during their interview of Petitioner and the truthfulness and voluntariness of the alleged confession statement that was written by Agent Asbill, as the newly discovered evidence is exculpatory. It was Counsel Robinson's deliberate strategy to omit this information on cross-examination. Rather, Counsel Robinson would cross-examine SLED Agent Asbill and ATF Special Agent Pait on how they conducted their interview of Petitioner with no evidence to support their testimony, but each other's own testimony. (See App. pp. 173 – 174; 183 – 184, Ln. 13 – 19; 6 – 16).

Counsel Robinson's sole defense at trial was one of mere presence. (See App. p. 729, Ln. 2 – 17). A defense that he himself did not believe. (See App. p. 1099). In all retrospect and viewing Petitioner's Motions and attachments, (see App. pp. 480 – 488, 489 – 511, 523 – 552, and 919 – 921), Petitioner believes that Counsel Robinson's failure to utilize the discovery material, his lack

of preparation, omissions at trial, both singly and considered together, constitutes ineffective assistance of counsel.

**b. Involuntarily Confession: Police Misconduct**

**1. SLED Agent, Ashley Asbill Has Falsified An Inculpatory Statement That The Petitioner Did Not Make or Even Write and Was Tricked/Mentally Coerced Into Signing**

The manufacturing of evidence by SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, is deplorable police conduct. There are circumstances and factual evidence in this case that was not presented and heard during Petitioner's trial that will reveal that Petitioner Garvin's will was overborne by SLED Agent, Ashley Asbill and ATF Special Agent, David Pait deplorable police conduct, so as to render the alleged confession statement, (see App. p. 1100), that the officers said Petitioner Garvin gave, to be involuntary. The officers did trick or coerce Petitioner Garvin into signing a blank statement that SLED Agent Asbill filled in later in his own words. (See App. pp. 295 – 309, Ln. 14 – 2); ( also see App. pp. 214, 220, Ln. 8 – 15, 2 – 11).

Here in this case, a manufactured document, (see App. p. 1100), was admitted as substantive evidence against Petitioner. The fabricated document should have been suppressed because it was the product of police trickery and coercion during a police interview.

Asst. Solicitor, James E. Hunter, did submit to the courts a fabricated document (see App. p. 1100)<sup>2</sup> and the perjured testimony of SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, in a *Jackson-Denno*<sup>3</sup> hearing and at trial against Petitioner, testifying 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*,<sup>4</sup> *Supra.*, then it was placed into evidence after being redacted, with no objection from Petitioner's Court-Appointed Attorney, Scott D. Robinson. (See App. p. 72, Ln. 7 - 20).

When in truth and in fact, as Asst. Solicitor, James E. Hunter, very well knew, the alleged confession was the fruit of an arrest that was unsupported by probable cause and evidence of an opportunity to commit the crime charged was insufficient in order to establish the *corpus delicti*

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<sup>2</sup> During Petitioner's PCR hearing he would present to the court material exculpatory evidence, (see App. pp. 1097 – 1098), that his Court-Appointed Attorney, Scott D. Robinson, would fail to present to the courts to prove his innocence.

<sup>3</sup> *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964)

<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)

for drug trafficking. Asst. Solicitor, James E. Hunter, did not provide any facts that corroborate facts contained in the confession; any facts that establish 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. The details of Petitioner's alleged confession was not corroborated by SLED Agent, Ashley Asbill and ATF Special Agent, David Pait's testimony during Petitioner's *Jackson-Denno* hearing and trial.

The testimony of SLED Agent, Asbill and ATF Special Agent, Pait does not state or corroborate that Petitioner Garvin knew of or was even involved with the drug transaction. (See App. pp. 45 – 53, 53 – 59, 166 – 174, 175 – 187, Ln. 11 – 9, 20 – 22, 5 – 19, 5 – 18). Asst. Solicitor, James E. Hunter, 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. 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.

The Petitioner argues that the admission of the incriminating statement as evidence violated his Fifth Amendment Constitutional right against self-incrimination. The method used to elicit the alleged confession statement in this case deserves close scrutiny. Because ATF Special Agent, David Pait and SLED Agent, Ashley Asbill, devised a ruse to trick Petitioner into signing a blank statement that was later filled in by SLED Agent, Asbill with an incriminating inculpatory statement in SLED Agent, Asbill's own words. (See App. pp. 295 – 300, Ln. 14 – 2).

Where there is conflicting evidence about a confession, the court must first make a finding as to the validity of the statement. *State v. Atchison*, 268 S.C. 588, 235 S.E.2d 294 (1977), cert. denied, 434 U.S. 894, 98 S.Ct. 273 (1977)

Here, the purpose of questioning Petitioner was to obtain information about drug crimes in North Jersey and Pennsylvania that Petitioner had witnessed, not to elicit a confession or incriminating information from Petitioner Garvin about him having an alleged involvement in the crime of drug trafficking in heroin in South Carolina.

**2. The Trial Judge Erred In Admitting An Involuntary Confession That Was Redacted To Hide The Fact About Police Misconduct.**

The trial judge erred in denying Petitioner's pre-trial *Jackson-Denno* hearing motion to exclude the evidence of an alleged confession. Petitioner argues that the State did not present sufficient evidence to satisfy the *corpus delicti* rule as express by the United States Supreme Court in *Opper v. United States*, 348 U.S. 84, 75 S.Ct. 158 (1954) and expressed by the South Carolina Supreme Court in *State v. Osborne*, 335 S.C. 172, 179 – 80, 516 S.E.2d 201, 204 – 05 (1999). In particular, Petitioner asserts that the alleged confession was the fruit of an arrest that was unsupported by probable cause and evidence of opportunity to commit the crime charge was insufficient in order to establish the *corpus delicti*.

Moreover, Petitioner states that his *Jackson-Denno* hearing was totally lacking a reliable evidentiary base that demonstrates the proper judicial review of the procedural safeguards that's effective to secure the privilege against self-incrimination. *State v. Williams*, 405 S.C. 263, 272, 747 S.E.2d 194, 199 (Ct. App. 2013) (citing *Miranda*, 384 U.S. at 144); also see S.C. Const. Art. I, § 22.

Here in this case, the details of Petitioner's alleged confession was not corroborated by Officer Asbill and Officer Pait's testimony during Petitioner's *Jackson-Denno* hearing and trial. (See App. pp. 45 – 53, 53 – 59, 166 – 174, 175 – 187, Ln. 11 – 9, 20 – 22, 5 – 19, 5 – 18). 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 App. pp. 203, 206, 207, 213, Ln. 18 – 19, 20, 2 – 7, 15 – 21); (also see App. pp. 295 – 300, Ln. 14 – 2).

The evidence presented at Petitioner's *Jackson-Denno* hearing and trial did not prove or corroborate that Petitioner Garvin was knowingly involved in the commission of a criminal act, or that there had been some planning an agreement between him and his co-defendant, Jonathan Perez pertaining to the act. 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. Furthermore, 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.

### **c. Conspiracy: Prosecutorial Misconduct**

**1. Asst. Solicitor, James E. Hunter, Has Conspired With Petitioner's Appointed Counsel, Scott D. Robinson, to Deprive Him of His Rights And Privileges Guaranteed By the Federal and State Constitution**

“A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence.” *McMillan v. Oconee Mem'l. Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (citation omitted). The elements a [Petitioner] must demonstrate in order to prove a civil conspiracy are (1) the combination of two or more people; (2) for the purpose of injuring the [Petitioner]; and (3) which cause special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). “[I]n civil [conspiracy] actions, the gravamen of the tort is the damage resulting to [the] [Petitioner] from an overt act done pursuant to a common design.” *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989).

Here in this case, the Petitioner will show by the record. That on or about April 5, 2013, Petitioner had 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 App. p. 1036, Counsel Robinson's filed Motion to Relieve Counsel). Whereas, a motion hearing date was scheduled for that motion to be heard on 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 App. pp. 11 – 12, Ln. 25 – 4).

The record would respectfully show this court that on or about April 12, 2013, Petitioner's Court-Appointed Pro-bono Attorney, Scott D. Robinson, Esq., withdraw his Motion to Relieve himself as Counsel then would combine 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 of 25 years with a \$200,000.00 fine.

It can be determined from the record that on April 12, 2013, Asst. Solicitor, James E. Hunter and Petitioner's court-appointed pro-bono attorney, Scott D. Robinson, Esq., did conspire

to convict Petitioner, as it was discussed in Circuit Judge, R. Lawton McIntosh's chambers. (See App. pp. 11 – 12, Ln. 25 – 4).

**d. Extrinsic Fraud: Prosecutorial Misconduct**

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

A judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." Extrinsic fraud is collateral or external to the trial of the matter. See *Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714 (2000). "Extrinsic fraud is fraud that induces a person not to present a case or deprived a person of the opportunity to be heard. Relief is granted for Extrinsic fraud on the theory that the fraud prevented a party from fully exhibiting and trying his case." quoting *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605 (2003).

The subornation of perjury and the submission of a fabricated document unto the courts by Asst. Solicitor, James E. Hunter, are actions which constitute extrinsic fraud. "[W]here an attorney – an officer of the court – suborns perjury or intentionally [submitted a fabricated] document[], he ... effectively precludes the opposing party from having his day in court.<sup>5</sup> These actions by an attorney constitute extrinsic fraud." quoting *Chewning*, 354 S.C. at 82. "Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of South Carolina's system of justice. Where[as,] an attorney [that] embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs." *Id.*<sup>6</sup>

Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esquire, had a mutual understanding to commit extrinsic fraud upon the court, to convict Petitioner, John Garvin of drug trafficking in heroin, their conduct and the circumstances that are within the record that creates circumstantial evidence that's susceptible to a reasonable inference that they did in fact conspire

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<sup>5</sup> See *Chewning*, 354 S.C. 72, n. 5, 579 S.E.2d 605 (2003) (internal citation omitted)(attorney has an ethical duty not to perpetrate a fraud upon the court by knowingly presenting perjured testimony).

<sup>6</sup> "[B]ecause fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice. [T]he perpetrator of the fraud upon the court should not be allowed to dispute the effectiveness of the fraud after the fact." *Id.* at n7.

to commit those acts for collateral purposes on April 12, 2013, in Judge McIntosh’s chambers. See *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006)(“In order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. [The] [c]onspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances.”).

Here, the “factual” basis for the fraud-based issue that’s before this court and that form Petitioner’s “collateral attack” on his underlying conviction consists of the alleged acts by Asst. Solicitor, James E. Hunter; SLED Agent, Ashley Asbill; ATF Special Agent, David Pait and Petitioner’s trial attorney, Scott D. Robinson in furtherance of their shared scheme to commit a fraud upon the court by utilizing the suborn testimony of SLED Agent, Ashley Asbill and ATF Special Agent, David Pait to prevail onto the courts for the appearance of presenting and establishing the trustworthiness of an alleged confession statement that was allegedly made by the Petitioner. Whereas, Petitioner’s trial attorney, Scott D. Robinson would deliberately fail to advise the Court’s of an existing conflict of interest and to inform Petitioner of and to utilize exculpatory evidence (see App. p. 1097 – 1098), to impeach SLED Agent, Asbill and ATF Special Agent, Pait. All these acts, individually and collectively, constitute “extrinsic” fraud. As such, they are grounds for setting aside Petitioner’s conviction.

**e. 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), Whereas, He has Shown Bad Faith, Has Prosecuted the Petitioner’s Case Maliciously and Sadistically to Cause Harm to Him With the Use of False Evidence**

“A convicted defendant is entitled to a new trial if he can establish that the Government intentionally or inadvertently failed to correct materially false testimony relevant to the credibility of a key Government witness at the trial.” quoting *United States v. Harris*, 498 F.2d 1164,1168 (3<sup>rd</sup> Cir. 1974). “The fact that a defendant knows that the [S]tate is attempting to secure his conviction on the basis of false evidence does not necessarily discharge the prosecutor from his duty to correct the false testimony [and evidence] or immunize the state from a claim that the defendant’s right to due process was violated.” quoting *Gomez v. Commissioner of Correction*, 336 Conn. 168, 243 A.3d 1163 (2020).

Petitioner states that Asst. Solicitor, James E. Hunter, “knowingly used false testimony” and a fabricated document as evidence to obtain Petitioner Garvin’s conviction in violation of *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959) and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972). Petitioner will show that the solicitor’s misconduct “so infect[ed] the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868 (1974).

The Petitioner further states, that his *Napue/Giglio* claim is cognizable because there is evidence that indicate that the State has committed extrinsic fraud upon the court. (See App. p. 110); (see App. pp. 1097 – 1098). The Petitioner also asserts that under the present facts, the PCR court chose to ignore this fact by stating in it’s order of dismissal, that “there has been presented no evidence tending to establish that the State’s witnesses provided perjured or false testimony, fabricated evidence used against the applicant in his trial, or that the prosecutor fraudulently or improperly relied upon that testimony in the prosecution of the applicant’s case.” “Applicant’s claim of prosecutorial misconduct have no merit and relief on those grounds are there denied.” (see App. p. 876). The PCR court has allowed to go uncorrected false information and evidence about its relationship with two of the state witnesses that was presented at the Petitioner’s trial.

The Petitioner would also point out that, Asst. Solicitor, James E. Hunter, knew or should have known it’s evidence and the testimony that was provided by the State’s Witnesses was false and misleading, if he would have properly investigated the discovery evidence he received from the Spartanburg County Sheriff Officers. That is, the falsity of the evidence was uniquely within the knowledge of the prosecution. Because the “false” nature of the evidence arises from it’s supposed relevance in light of a police interview conducted by SLED Agent, Ashley Asbill, and ATF Special Agent, David Pait, after Petitioner was falsely arrested on July 17, 2012. The newly discovered evidence, (see App. P. 1097), existed and was deliberately not presented at Petitioner’s trial by his appointed counsel. In short, this is new evidence about this particular claim of actual innocence shows that extrinsic fraud upon the court was committed by the State.

The PCR court’s findings are not supported by competent evidence of probative value in the record to support its findings. Clearly, the PCR court has overlooked the evidence that the Petitioner has presented before the PCR court. Specifically, Petitioner’s exhibits – 1 and 2, (see App. Pp. 1097 – 1098), establishes that extrinsic fraud upon the Courts was committed by the State

and that he was prejudiced by Counsel Robinson's deficient performance to present exculpatory evidence that would have proved Petitioner's innocence.

**2. Asst. Solicitor, James E. Hunter, Has Vouched For the Credibility of the State's Witnesses, that Have Committed Perjury During Petitioner's Trial**

The Due Process Clauses in both the Fifth and Fourteenth Amendments provide that no person may be deprived of liberty "without due process of law." U.S. CONST. AMEND. V; *Id.* XIV, § 1. To find whether the Assistant Solicitor, James E. Hunter's comments in closing argument violated the Petitioner's due process rights. This court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. See *Darden v. Wainwright*, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986) ("The relevant question is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 1871 (1974))); *United States v. Chorman*, 910 F.2d 102, 113 (4<sup>th</sup> Cir. 1990) (Stating "the test for reversible prosecutorial misconduct" in a prosecutor's closing argument is "the prosecutor's remarks or conduct must in fact have been improper, and ... such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial" (citation omitted)).

Petitioner did not receive a fair trial due to, Asst. Solicitor, James E. Hunter, vouching for the creditability of the State's witnesses within his closing argument. (See App. pp. 254 – 259, Ln. 10 – 13). This, Solicitors may not vouch for a witness's credibility, as doing so improperly invades the province of the jury and places the government's prestige behind the witness. *Id.* (citing *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (stating that a solicitor improperly vouches for a witness's credibility "by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony"). This, solicitor[ ] must confine [his] closing remarks to the record and the reasonable inferences that may be drawn therefrom. *Id.*

Here, Petitioner's trial counsel's closing argument did not invite the solicitor to repeatedly assert that the State's witnesses were truthful in their testimony and had no motive to lie. Rather, trial counsel's presentation merely pointed out that the confidential informant, Fredrick Jerman's motive for testifying, (see App. pp. 245 – 254, Ln. 21 – 5), which could do no more than invite the solicitor to point out the defendant's witnesses motive to testify.

“The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.” “[A] prosecutor cannot vouch for a witness’ credibility. A prosecutor improperly vouches for a witness’ credibility and places the government’s prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony.” quoting *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (citation omitted). “[A] solicitor’s comments “so infect[s] [a] trial with unfairness as to make the resulting conviction a denial of due process.”” *Id.* at 170, 607 S.E.2d at 75. (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 642, 94 S.Ct. 1868 (1974)).

A “prosecutor’s deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. The failure to correct false evidence is as reprehensible as it’s presentation.” quoting *Riddle v. Ozmint*, 369 S.C. 39, 47 – 48, 631 S.E.2d 70 (2006) (citing *Washington v. State*, 324 S.C. 232, 478 S.E.2d 833 (1996) (quoting *Giglio v. United States*, 405 U.S. 150, 153, 92 S.Ct. 763 (1972))).

Accordingly, there is evidence in the record to support the Petitioner’s claim of prosecutorial misconduct for extrinsic fraud that was committed by Asst. Solicitor, James E. Hunter and his repeated vouching for the State’s witnesses credibility. Petitioner’s trial counsel’s representation of him has aided Asst. Solicitor, James E. Hunter and Counsel Robinson was deficient for failing to object to the Solicitor’s vouching for it’s witnesses. The prejudicial impact of Counsel Robinson’s failure to object is evident from the record, prejudice has clearly flowed from counsel’s error.

## **II.**

**THE TRIAL COURT’S DENIAL OF PETITIONER’S MOTION TO RELIEVE COUNSEL AND HIS OBJECTIONS TO APPOINTED COUNSEL’S REPRESENTATION OF HIM DURING HIS TRIAL, DID PLACE AN ACTUAL CONFLICT OF INTEREST UPON PETITIONER WHEN A COMPLAINT WAS FILED WITH THE OFFICE OF DISCIPLINARY COUNSEL AND A COMPLAINT WAS FILED IN FEDERAL COURT AGAINST HIS COURT-APPOINTED COUNSEL AND THE ASST. SOLICITOR PRIOR TO TRIAL, DID CONSTITUTIONALLY PREJUDICED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND TO A FAIR TRIAL AS GUARANTEED TO HIM UNDER THE SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND PURSUANT TO *CUYLER v. SULLIVAN*, 446 U.S. 335 (1980) AND *UNITED STATES v. CRONIC*, 466 U.S. 648 (1984).**

### **A. Substitution of Court-Appointed Counsel**

In deciding whether Petitioner's trial court abuse it's discretion in denying his motion to relieve counsel or to substitute counsel, the South Carolina Supreme Court has articulated and applied the three factors to evaluate when faced with a motion to relieve counsel, in *State v. Sims*:

- 1) Timeliness of the motion;
- 2) Adequacy of the trial judge's inquiry into the defendant's complaint; and
- 3) Whether the attorney-client conflict amounts to a total lack of communication.

304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991) (citing *U.S. v. Gallop*, 838 F.2d 105 (4<sup>th</sup> Cir. 1988)).

Turning to the first factor, Petitioner stated at his trial, that during the month of December, 2012, that he wrote a letter to the Chief Administrative Judge, J. Derham Cole, about Petitioner wanting to relieve Scott D. Robinson, Esq., as his counsel. (See App. p. 82, Ln. 12 – 18). Then on or about April 9, 2013, during an attorney legal visit at Spartanburg County Detention Center, Petitioner Garvin asked Counsel Robinson to relieve himself as Counsel. Whereas, Counsel Robinson filed a motion to relieve counsel on April 10, 2013. (See App. p. 1036, Scott D. Robinson's filed Motion to Relieve Counsel). But then withdrew that motion on the day of the motion hearing after talks in Chambers with Asst. Solicitor, James E. Hunter and Circuit Judge, R. Lawton McIntosh, on April 12, 2013. (See App. p. 11 – 12, Ln. 25, 1 – 4). After Counsel Robinson would withdraw his motion to relieve counsel, Petitioner would then file his own pro-se motion to relieve counsel on May 12, 2013. (See App. pp. 1093 – 1094). Whereas, his motion would be denied without a hearing or an order being issued on May 14, 2013, by Circuit Judge McIntosh. (See App. p. 998, Court Docket, Judge McIntosh Denied Petitioner's May 12, 2013, Motion to Relieve Counsel without a hearing). Then on May 21, 2013, on the day of trial, Counsel Robinson requested to be relieve as counsel and Petitioner also requested to Judge McIntosh to relieve Scott D. Robinson as his attorney. (See App. p. 7 – 13, Ln. 11 – 4).

The trial court in this matter was certainly put on notice that Counsel Robinson wished to withdraw as Counsel after his first motion was filed, but then withdrew that motion after talks in chambers with Asst. Solicitor, James E. Hunter and Circuit Judge, R. Lawton McIntosh. (See App. pp. 11 – 12, Ln. 25, 1 – 4). As such, this factor weighs in Petitioner's favor, due to the interference from Circuit Judge McIntosh and Asst. Solicitor, James E. Hunter, with attorney-client relationship that caused Counsel Robinson to withdraw his motion to relieve himself as counsel.

Turning to the second factor, however, the record reveals that the trial court failed to engage in an adequate inquiry. “When a defendant raises a seemingly substantial complaint about counsel, the judge ‘has an obligation to inquire thoroughly into the factual basis of defendant’s dissatisfaction.’ ” *United States v. Mullen*, 32 F.3d 891, 896 (4<sup>th</sup> Cir. 1994)(internal citations omitted). “An inquiry into the reasons for a defendant’s dissatisfaction with his or her lawyer is necessary for the trial court to determine whether good cause for substitution of counsel exists.” *Id.* (internal citations omitted). “The [trial] court [and this court] is far better situated ... to observe and inquire into the state of the relationship between a defendant and his appointed counsel, and thus, where the [trial] court has met it’s ‘obligation to inquire thoroughly into the factual basis of defendant’s dissatisfaction’, ... [thus] apply[ing] the ordinary standard of review to its factual findings: clear error.” *United States v. Smith*, 640 F.3d 580, 590 (4<sup>th</sup> Cir. 2011) (citing *Mullen*, 32 F.3d at 896). “While motions to substitute counsel often arise at the defendant’s urging, [but] when the attorney also seeks to withdraw, the Court must thoroughly inquire into the factual basis of any conflicts asserted by counsel.” quoting *United States v. Blackledge*, 751 F.3d 188, 194 (4<sup>th</sup> Cir. 2014).

In this case, the trial court did not meet it’s obligation to thoroughly inquire into the extent of the communications breakdown or the basis of the asserted conflict. Despite the representation from Counsel Robinson and Petitioner Garvin on the morning of trial that they both moved for Counsel to be removed, the trial court did not ask when they had last seen each other or communicated about the case.<sup>7</sup> Tasked with reviewing the motions to relieved counsel *de novo*, because the trial court erred in failing to examine how the communications between Petitioner Garvin and Counsel Robinson had come to a breakdown in communications prior to trial. The trial court would emphasized on Counsel Robinson’s competence as a lawyer to file a “Rule – 5 [and/or] Brady motion” (see App. p. 12, Ln. 10 – 12), but an attorney’s competence cannot cut short the

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<sup>7</sup> Despite Counsel Robinson’s assertion that he and Petitioner Garvin had a breakdown in communication and that he expressed to the Court that Petitioner Garvin does not feel comfortable with him representing him and that he does not feel comfortable representing Petitioner Garvin (see App. p. 8, Ln. 2 – 7), Judge McIntosh infers that they were indeed able to communicate from the fact that Counsel Robinson filed a “Rule – 5 [and/or] Brady Motion,” on or about October 19, 2012. However, the fact that Counsel Robinson filed this pleading on Petitioner Garvin’s behalf does not establish that they were actually able to communicate prior to Petitioner Garvin’s May 21, 2013 trial, and indeed, such an inference is undermined by the fact that Counsel Robinson moved before the Court for a second motion to withdraw the day of trial. Had the trial court followed the “best practice” of making “an express finding on the record about the state of communication between defendant and Counsel,” *Blackledge*, 751 F.3d at 195 n. 4, then perhaps this court would not be left wondering when Counsel Robinson and Petitioner Garvin had last meaningfully communicated about his defense.

inquiry because, “[e]ven if a defendant’s counsel is competent, a serious breakdown in communication can result in an inadequate defense.” quoting *Blackledge*, 751 F.3d at 195 (citation omitted). Most significantly, the trial court failed entirely to inquire about the internal ethical conflict that Petitioner Garvin was trying to present to the trial court (App. pp. 9 – 10, Ln. 14 – 25, 1 – 22); (App. pp. 81 – 85, Ln. 15 – 2) or the breakdown in communication that Counsel Robinson presented to the Court (App. pp. 7 – 8, Ln. 22 – 7) and whether their internal ethical conflict had been resolved at all. The trial court’s failure to probe deeply into the basis of Petitioner Garvin’s and Counsel Robinson’s conflict seriously undermined it’s decision, and this factor weighs heavily against the trial court’s ruling.

Turning to the third factor, because the trial court failed to engage in an adequate inquiry, it’s factual determination that there was “insufficient grounds to warrant relieving Mr. Robinson as [the] attorney,” is a clear error. (See App. p. 84, Ln. 14 – 15). If this court were to review this finding for clear error, however, this factor likewise weighs against the trial court’s ruling.

Firstly, a conflict of interest emerged once Petitioner Garvin filed a complaint with the “ODC” on January 13, 2013, (see App. pp. 1003 – 1004, “ODC” lettered complaint), against Counsel Robinson and Asst. Solicitor, James E. Hunter, for Counsel Robinson’s failure to be present at Petitioner’s requested preliminary hearing and his abandonment of him at his requested preliminary hearing and Asst. Solicitor, James E. Hunter for postponing Petitioner’s preliminary hearing two times and then moving before the Court for it to be waived for failure to appear, thus, depriving Petitioner of a requested preliminary hearing to challenge the probable cause finding. Then on February 12, 2013, Petitioner would also file a petition for writ of habeas corpus alleging ineffective assistance of counsel and for the Solicitor’s control of docket are in violation of his constitutional rights. (See App. pp. 1006 – 1018, a filed petition for writ of habeas corpus). Petitioner find useful the D.C. Court of Appeals decision in *Douglas v. United States*, 488 A.2d 122 (D.C., 1985) and the Hawai’i Supreme Court decision in *State v. Harter*, 134 Hawai’i 308, 340 P.3d 440 (2014) citing the *Douglas* case, explained how a defense attorney’s personal interest interferes with representation under similar circumstances to this case.

In this case, this court needs to decide whether Counsel Robinson actually had a personal, potentially conflicting interest as in *Douglas* and *Harter*, because a conflict arose from Petitioner Garvin’s two complaints that was filed, insomuch as, to whether Counsel Robinson’s failure to identify it and report it to the trial court was an error. The Fourth Circuit Court of Appeals has

recognized in the context of federal habeas proceedings that “a clear conflict of interest exists in requiring ... counsel to identify and investigate potential errors that they themselves may have made ...” *Blackledge*, 751 F.3d at 195 (quoting *Gray v. Pearson*, 526 Fed. Appx. 331, 334 (4<sup>th</sup> Cir. 2013)). This conflict exists irrespective of whether Counsel Robinson is ultimately found to have erred, for failing to present a conflict of interest to the trial court. This conflict further undermined Petitioner’s trust in Counsel Robinson and strained their ability to communicate.

Secondly, Petitioner simultaneously also filed a complaint against Asst. Solicitor, James E. Hunter, and Scott D. Robinson, Esq., with the “ODC”, (see App. pp. 1003 – 1004), and a petition for writ of habeas corpus in federal court, (see App. pp. 1006 – 1018), thus, stating to the trial court that he “feels as though [he’s] being [blind]-sided. He feels like it’s two attorneys against me, cause I don’t feel as though I’m fully being represented because I filed a complaint against them both with the Office of Disciplinary Council and I filed one in the federal court against them.” (see App. p. 83, Ln. 1 – 10).<sup>8</sup> However, in this case, Petitioner filed a seemingly non-frivolous complaint with the “ODC”, (see App. pp. 1003 – 1004), and in Federal Court, (see App. pp. 1006 – 1018), against Counsel Robinson and the prosecuting Solicitor, about being deprived of his preliminary hearing that he requested on July 18, 2012. (See App. p. 1032). Petitioner asked Counsel Robinson to Relieve himself, at which he file a motion to relieve counsel with the courts, but then withdrew that motion after talks in chambers with the Asst. Solicitor, James E. Hunter, (who Petitioner also filed a complaint against) and Judge McIntosh a month before Petitioner’s May 21, 2013, trial. (See App. pp. 11 – 12, Ln. 25 – 4). The complaints that Petitioner filed against Counsel Robinson, forced Counsel Robinson to choose between protecting his own reputation and arguing in his client’s best interest during Petitioner’s trial.

Thirdly, the trial court had before it an internal ethical conflict, and failed to conduct an adequate inquiry, it is very clear that this conflict was never resolved at trial or prior to trial. Moreover, the trial court made no inquiry whatsoever into the scope and nature of this conflict. As a result of the trial courts failure to inquire, there is no way of knowing whether the internal ethical conflict was indeed so significant that it required Counsel Robinson’s withdrawal as counsel. See *Mickens v. Taylor*, 240 F.3d 348, 357 – 58 (4<sup>th</sup> Cir. 2001)(“[A] trial court must inquire into a conflict of interest ‘when it knows or reasonably should know that a particular conflict exists.’”)(quoting *Cuyler v. Sullivan*, 446 U.S. 335, 347, 100 S.Ct. 1708 (1980)). Indeed, despite

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<sup>8</sup> Petitioner filed a complaint about the accuracy of his trial transcript to the court reporter of that case.

the fact Counsel Robinson did opine that he doesn't feel comfortable representing Petitioner Garvin, this assertion can be isolated from his protestation that he stated on the record. (See App. p. 8, Ln. 3 – 7).

Notwithstanding the trial court's failure to inquire and the lack of clarity as to the extent of the internal ethical conflict, Counsel Robinson's withdrawal of his motion to relieve counsel and the complaints that were filed with the "ODC" and the federal habeas corpus complaint filed in federal court against Counsel Robinson and Asst. Solicitor, James E. Hunter, taken together, created a conflict of interest. As such, this court must consider whether the conflict resulted in a total breakdown in communications preventing an adequate defense. "A total lack of communication is not required," *Blackledge*, 751 F.3d at 197 (citation omitted)(emphasis added), but rather this court should be concern with "a 'breakdown' of attorney-client communication so great that the principal purpose of the appointment – the mounting of an adequate defense incident to a fair trial – has been frustrated." *Id.*

The most telling evidence of the extent of the breakdown and it's impact on Petitioner Garvin's defense is the assertion from Garvin on the morning of the trial that they failed to engage in trial preparation and that they haven't really spoken, (see App. p. 82, Ln. 6 – 10), and Counsel Robinson's assertion that it was " very difficult for [him] to continue in this case." (see App. p. 9, Ln. 9 – 10). The trial court would take the fact that Counsel Robinson stated that Petitioner Garvin has received the discovery and that "Counsel Robinson" himself reviewed the tape in the case.

In this case, Counsel Robinson did labor under a conflict of interest that caused his communications with Petitioner Garvin to be so broken that a "fundamental step for adequate representation" — basic trial preparation — failed to occur. The Fourth Circuit Court of Appeals has previously noted, "it is the marriage of the attorney's legal knowledge and mature judgment with the defendant's factual knowledge that makes for an adequate defense." *Blackledge*, 752 F.3d at 197 (citing *Smith*, 640 F.3d at 588). Now, because of the communications breakdown, Counsel Robinson deliberately presented no exculpatory evidence, (see App. pp. 1097 – 1098), that he had within his possession, that could've corroborated Petitioner Garvin's testimony of being tricked/mentally coerce into signing a blank statement during his trial proceeding. (See App. pp. 295 – 300, Ln. 14 – 2). Also the record shows that Counsel Robinson deliberately failed to subject the State's prosecution of Garvin to adversarial testing. This factor therefore weighs against the court's ruling.

Weighing all three *Sims* factors, the trial court did abused it's discretion. Counsel Robinson filed a motion to be relieved as counsel a month before Petitioner's trial date on April 10, 2013. (See App. p. 1036). Then on the date of the motion hearing on April 12, 2013, Counsel Robinson withdraws that motion after talks in chambers with the Asst. Solicitor, James E. Hunter and the trial judge. (See App. pp. 11 – 12, Ln. 25 – 4). On the day of trial Counsel Robinson renews that motion after visiting Petitioner the day before trial. Asst. Solicitor, James E. Hunter and the trial judge's interference with attorney-client relationship on April 12, 2013, is a conflict that needs to be inquired into. The trial court has failed to perform an adequate inquiry here in this case, the record in this case nonetheless reveals that the above-discussed conflict resulted in a communication breakdown that prevented Counsel Robinson and Petitioner Garvin from mounting an adequate defense. As such, Judge McIntosh abused his discretion in denying the Petitioner's motion to relieve counsel.

**1. Assistance Counsel, Scott D. Robinson Has Violated Petitioner's Right to Adequate Legal Representation:**

The Petitioner raises numerous complaints that his trial counsel, Scott D. Robinson's, deficient performance failed to function as effective assistance of counsel as guaranteed by both the South Carolina and the United States Constitution. Whereas, in this case Petitioner asserts that trial Counsel's performance has constructively denied him effective assistance of counsel during the critical stages of his State proceeding and that he failed to subject the State's prosecution of him to meaningful adversarial testing, due to the above-mentioned conflict of interest, pursuant to *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039 (1984).

**a. Petitioner Was Constructively Denied the Assistance of Counsel in His Defense**

To establish a *prima facie* claim of ineffective assistance of counsel, a defendant must demonstrate the reasonable likelihood of succeeding under the test set forth in *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068 (1984), and *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039 (1984), which this court adopted in *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988). Under the *Strickland-Cronin-Frett* standard, the first issue is whether counsel's performance was deficient. Petitioner points to several aspects of counsels' performance as being deficient. Nevertheless, Petitioner will demonstrate within the record that his trial counsel, Scott D. Robinsons' conduct and lack of action, that the cumulative effect of his casual and superficial representation of Petitioner's interests constitutes deficient performance.

The second, and far more difficult, prong of the *Strickland-Cronic-Frett* test is whether there exists “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland, supra*, 466 U.S. at 694, 104 S.Ct. at 2068. Petitioner asserts that the patently-inadequate preparation by his court-appointed attorney, Scott D. Robinson, Esq., and the combine effect of the twenty-three failures that was presented at the PCR hearing, displays a *prima facie* case of ineffective assistance of counsel, pursuant to *Cronic, supra*.

A breakdown in the adversarial system compels an application of the *Cronic* exception to the *Strickland* prejudice test for ineffective assistance of counsel. *Cronic*, at 659-60, 104 S.Ct. 2039. The first and second circumstances applies in this case. As for *Cronic*’s first exception, the preliminary hearing in South Carolina “sole purpose [is] to determine whether there [is] sufficient evidence against a defendant to warrant presenting their case to a grand jury and, if so, to fix bail if an offense [is] bailable was a critical stage of their State’s criminal process at which accused [are] entitled to aid of counsel.” See *Cole v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999 (1970); also 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.”). Petitioner states that he was completely denied counsel at this critical pretrial phase.

A complete denial of counsel occurs “ when a criminal defendant must navigate a critical stage of the proceedings against him without the aid of ‘an attorney dedicated to the protection of his client’s rights under an adversarial system of justice.’” *Childress v. Johnson*, 103 F.3d 1221, 1229 (5<sup>th</sup> Cir. 1997)(citing *U.S. v. Swanson*, 943 F.2d 1070, 1075 (9<sup>th</sup> Cir. 1991)); see *Cronic*, 466 U.S. at 655 n. 11, 104 S.Ct. 2039. “Where assistance of counsel has been denied entirely or during a critical stage of the proceeding.” *Mickens v. Taylor*, 535 U.S. 162, 166, 122 S.Ct. 1237 (2002)(citing *Cronic*, 466 U.S. 648, 659-60, 104 S.Ct. 2039 (1989)(prejudice presumed where there is “the complete denial of counsel,” such as “if the accused is denied counsel at a critical stage of his trial”)). The most obvious example is where counsel was physically absent. Under *Cronic* the question is not whether Petitioner Garvin’s trial counsel was inadequate, but whether the inadequacy rose to a complete denial of representation.

Petitioner Garvin was completely denied counsel under *Cronic* because he was not represented at his requested October 25, 2012, preliminary hearing<sup>9</sup>, (see App. p. 1032), prior to him being indicted on December 6, 2012, which was a ‘critical stage’ of his State proceedings and that South Carolina’s failure to provide Petitioner with that requested preliminary hearing with effective assistance of counsel on October 25, 2012, has therefore unconditionally deprived Petitioner of his Fourteenth Amendment right to due process. Whereas, his court-appointed counsel’s deliberate failure to appear, (see App. pp. 74 – 75, Ln. 13 – 17, 1 – 15); (also see App. pp. 125 – 127, Ln. 1 – 15), has deprived him of his Sixth Amendment right to effective assistance of counsel during a ‘critical stage’ of his State proceeding and “is a complete denial of counsel.” *Cronic*, 466 U.S. at 659.

Scott D. Robinson’s deliberate failure to appear, (see App. pp. 125 – 127, Ln. 1 – 15), at Petitioner’s requested preliminary hearing was done so that Asst. Solicitor, James E. Hunter, could legally waive Petitioner’s pretrial statutory rights to a preliminary hearing for failure to appear,<sup>10</sup> to whereas, making it possible for Asst. Solicitor, James E. Hunter, to indict and prosecute Petitioner for the alleged crime of drug trafficking in heroin without having to present any direct evidence of a proper finding of probable cause before a Spartanburg County Grand Jury,<sup>11</sup> thus, having Petitioner to thereby lose his opportunity to challenge the probable cause finding at the preliminary hearing stage. Inasmuch as, Asst. Solicitor, James E. Hunter, could bring forth and true-bill his indictments of Petitioner without presenting any direct evidence for the crime of drug trafficking, (see App. p. 11, Ln. 22 – 24), that Petitioner was falsely arrested for on July 17, 2012.

Petitioner had “the right to the advice of counsel at [his preliminary hearing] [that is a] critical stage[] of [his State] proceeding, defined as ‘any stage of the prosecution, formal or informal, in court or out, where Counsel’s absence might be derogate from the accused’s right to

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<sup>9</sup> On July 18, 2012, Petitioner, John Garvin, made a requested demand for a preliminary hearing, pursuant to S.C. Code Ann. § 22-5-320 (Defendant’s Demand for Preliminary Investigation). (See App. p. 1032).

<sup>10</sup> That preliminary hearing, “[w]hich determined the admissibility of evidence against him. Whereas, [Petitioner] clearly did not voluntarily absent himself from the proceedings. [Petitioner] was in the custody of [Spartanburg County Detention Center with denied bail], so there [should have been] no issue as to his whereabouts.” (quoting *Commonwealth v. Campbell*, 83 Mass. App. Ct. 368, 374, 983 N.E.2d 1227 (2013)).

<sup>11</sup> Rule – 3.8(a)(c) n. [2], RPC, Rule – 407, SCACR (“The prosecutor in a criminal case shall, refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; and not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.” “Accordingly, prosecutors should not seek to obtain waivers of preliminary or other important pretrial rights from unrepresented accused persons.”)

a fair trial.”” quoting *United States v. Wade*, 388 U.S. 218, 226, 228, 87 S.Ct. 1926, 1932 – 33 (1967). The prejudice created from Counsel Robinson’s failure to appear was deliberate after he was put on notice by petitioner in a letter to him, (see App. pp. 681 – 683, Ln. 2 – 25, 1 – 25, 1 – 15), and if Counsel was present at petitioners preliminary hearing, petitioner could have avoided the detriment of an overreaching prostitution that brought forth two indictments without a proper finding of probable cause. (See App. pp. 1040 - 1044). In so much as, Petitioner’s rights inheres in the ability of counsel to help avoid that prejudice. *Id.* at 227, 87 S.Ct. at 1932.

This is not the first time a complete denial of counsel under *Cronic* in the pretrial phase, has occurred when Counsel was absent before trial and did not meet with his client to prepare for trial. In *Mitchell v. Mason*, the Sixth Circuit found the defendant was completely denied counsel during the critical pretrial phase, when “Counsel was suspended from the practice of law for the month preceding trial ... met with [the defendant] for no more than six minutes over the seven-month period before trial, ... and the trial court repeatedly ignored [the defendant’s entreaties for counsel who would properly prepare a defense.” See 325 F.3d 732, 742 (6<sup>th</sup> Cir. 2003). The court focused on Counsel’s duty to investigate, explaining there was no way to discharge the duty if he failed to consult with his client. The court concluded that, in these circumstances, “no effort to consult with the client was made ,” and thus the defendant was completely denied his Sixth Amendment right to the assistant of counsel during a critical pretrial stage of the proceeding. *Id.* at 744.

The facts here are similar. While Petitioner Garvin’s counsel was not suspended from the practice of law, he would deliberately fail to appear at his preliminary hearing to challenge the probable cause findings of the arrest warrants that were issued. Thus, causing the Asst. Solicitor, James E. Hunter, to move before the court for the waiver of Petitioner’s preliminary hearing for Counsel’s failure to appear. Insomuch as, Asst. Solicitor, James E. Hunter, would bring forth two indictments that based a probable cause finding on the arrest warrants, Petitioner’s indictments were not direct indictments. (See App. p. 11, Ln. 22 – 24). Then Counsel Robinson would fail to present those indictments to Petitioner and would fail to even arrange for him to be present for an arraignment to be properly put on notice of the charge to plead his innocence before the courts after being indicted over Petitioner’s entire pretrial period — requiring him to not be put on proper notice of the charges against him at the pretrial critical stage period, not to mention his failure to investigate. In addition, while counsel in *Mitchell* met with the defendant for no more than six

minutes, Counsel Robinson did not meet with Petitioner for almost four months after receiving his *Brady*<sup>12</sup> material from the State before Petitioner asked him to relieve himself as Counsel. Lastly, and most significantly, Petitioner's repeated requests for Counsel to be relieved were effectively pushed aside by trial counsel and the Court. Thus, following *Mitchell* this should lead this Court to a conclusion that Petitioner was completely denied counsel under *Cronic*.

The record that's before this Court has all the elements of a *Cronic* violation, and should lead this Honorable Court to the conclusion that the Sixth Amendment demands more than the presence the morning of trial a warm body with a law degree. The Respondent cannot seriously argue that Counsel Robinson's failure to appear at Petitioner's requested preliminary hearing to challenge the probable cause findings of Petitioner's arrest in advance of trial with a client facing a serious felony drug charge that carry's a lengthy mandatory minimum prison term was effective. Under the stark facts in this appeal — no meaningful advance discussion with Petitioner of trial strategy, what witnesses to call<sup>13</sup>, how to respond to the State's evidence, whether Petitioner should testify, and no sober conversation with Counsel outside the distractions of the morning of trial of Petitioner trying to relieve Counsel Robinson as his counsel — the Petitioner should not have to point to any specific event of prejudice and disprove the PCR court's order of dismissal that trial counsel was effective enough at trial to satisfy the Sixth Amendment. As the United States Supreme Court said in *Cronic*, some situations “ma[k]e it so unlikely that any, lawyer could provide effective assistance that ineffectiveness [i]s properly presumed without inquiry into actual performance at trial.” *Cronic*, 466 U.S. at 661, 104 S.Ct. 2039 (discussing *Powell v. State of Ala.*, 287 U.S. 45, 53 S.Ct. 55 (1932), where defense counsel was appointed the day of trial in a capital murder case).

Now, as for *Cronic*'s second exception, in this case. When Petitioner Garvin exercised his ultimate authority to make certain fundamental decisions, his attorney, Scott D. Robinson, Esquire, insisted on his own objective. The enormity of this conflict was some what accurately summarized by Counsel Robinson during an exchange at Petitioner's PCR hearing on cross-examination by the State. He would explain that, “I thought he was not cooperative sometimes. It's - - I can honestly say that, because he didn't - - you know, sometimes clients think that they have a better way of

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<sup>12</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

<sup>13</sup> The record will show that Counsel Robinson didn't even prepare a witness list. During the day of trial, Counsel Robinson was not going to put Petitioner on the stand or his co-defendant, Jonathan Perez. Counsel was trying to induce Petitioner to pled guilty. (See App. p. 1099).

doing things than the attorney does. And that may be what the lack of cooperation was in this case.” (see App. p. 727, Ln. 16 – 23). So in terms of where the two ships were sailing in wanting the criminal matter to be litigated, Petitioner and Counsel Robinson were not on the same course. Petitioner Garvin’s overarching strategy was to obtain a verdict of not guilty by presenting exculpatory evidence, (see App. p. 1097), to show that he was trick/mentally coerced into signing a blank statement and that he was factually innocent. Counsel Robinson had an independent and inconsistent strategy: to obtain a verdict of not guilty by conceding that “just because [Garvin] was there doesn’t - - didn’t mean he was guilty of this charge.” (see App. p. 173, Ln. 5 – 10). He would present a mere presence defense without any evidence to support or contradict the State’s evidence that Petitioner was not knowingly involved in the drug transaction. A mere presence defense that he himself didn’t even believe. (See App. p. 1099). Counsel Robinson’s representation would fail to challenge the voluntariness of the involuntary confession statement. Counsel’s override negated Petitioner Garvin’s decisions regarding his constitutional rights, and created a structural defect in the proceeding as a whole.

Counsel Robinson’s legal representation of Petitioner, aided the solicitor with the introduction of the alleged confession statement, (see App. p. 1100), by not properly challenging the voluntariness of that involuntary confession statement during Petitioner’s *Jackson-Denno* hearing and trial. Counsel would make just a “standard motion in term of voluntariness and a regular *Jackson-Denno* objection,” without setting forth the grounds for the objection to be properly preserved for Petitioner’s direct appeal. (See App. p. 63, Ln. 11 – 13). 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). 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). Counsel failed to object to Asst. Solicitor, James E. Hunter’s closing argument that vouch/bolstered the credibility of the State’s witnesses. (See App. p. 255, Ln. 12 – 13); (App. pp. 256 – 257, Ln. 25, 1 – 3) and (App. p. 259, Ln. 2 – 6). His failure to object to comments constitute an error of law and is 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). Counsel’s failure to

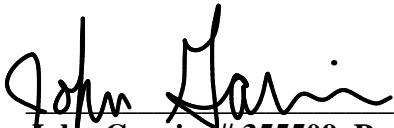
request for a *Frank's*<sup>14</sup> hearing to challenge the arrest warrants probable cause findings and his failure to utilize exculpatory evidence to impeach the State's witnesses that he had within his possession. (See App. p. 1097). Thus, on the issue of Petitioner's guilt and the elements of drug trafficking in heroin, Counsel Robinson's alignment with the prosecutor was complete. See *State v. Carter*, 270 Kan. 426, 437, 14 P.3d 1138, 1146 (2006). Indeed, Counsel Robinson did help the solicitor by introducing the fabrication of false evidence against Petitioner Garvin to build a case on inaccurate and misleading information that led to his wrongful conviction and imprisonment for the crime of drug trafficking.

The legal representation and conduct of Counsel Robinson was inherently prejudicial and does not require a separate showing of prejudice, because Petitioner Garvin's counsel negated his basic trial rights and "failed to function in any meaningful sense as the [prosecution's] adversary ." see *Cronic*, 466 U.S. at 666, 104 S.Ct. 2039; *Carter*, 14 P.3d at 1145 (citing *Cronic*, 466 U.S. at 666, 104 S.Ct. 2039). Counsel Robinson's legal representation was done in bad faith, his conduct so undermined the proper functioning of the adversarial process that Petitioner's May 21 – 23, 2013, trial cannot be relied upon as having produced a just result. Accordingly, this Honorable Court should find no other alternative except to grant Petitioner a new trial.

### CONCLUSION

**WHEREFORE**, based on the foregoing arguments and authorities, this Honorable Court is respectfully urged to grant the Petitioner's Petition for Writ of Certiorari and for Temporary and Permanent Injunctive Relief.

**DATED: December 23, 2021**

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

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<sup>14</sup> *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)