

**In The Criminal Court of Shelby County, Tennessee for the Thirtieth
Judicial District Court at Memphis, Tennessee
Division III**

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MEMPHIS
CRIMINAL COURT CLERK

MOTION FOR RECUSAL

Jason White, Petitioner

v.

Case # 17-01568/ 16-02794
C1702460

State of Tennessee

Comes now Petitioner, Jason L White, Pro-se and filing this second Motion to Recuse (with Exhibits) Judge Robert Carter, Jr in the pending Post-conviction hearing. Petitioner states he filed a timely Motion to Recuse on May 16, 2020 (See Motion to Recuse (App. A, pg. 8-13) and on August 28, 2020 Judge Carter entered an Order of Denial on the Motion to Recuse without a hearing and only partially replying to the Petitioner's reasons for his refusal to recuse (See Order of Denial App. B, pg. 14-16). Petitioner states he filed his Amended Post-conviction Petition raising claims against Judge Robert Carter's decision making after finding the ex parte communication with ADA Chris Scruggs.

For the following reasons Petitioner states Judge Robert Carter should resign:

1.)Mr. White filed a timely Motion to Recuse after finding the transcripts of the ex parte communication between ADA Scruggs and Judge Carter (See Transcripts App. C, pg. 17-23). Petitioner filed his Amended Post Conviction Petition on March 31, 2021 that included the ex parte communication transcripts found through the Petitioner's due diligence (See Amended Post- conviction Petition App. D, pg. 24-50). For the reasons, Petitioner filed his Amended Post-conviction Petition to include the inappropriate ex parte communication due to Ineffective Assistance of Counsel (IAC). In Judge Carter's

decision to engage in the ex parte communication clearly “provides a reasonable questioning of the ability of the trial court to be fair and impartial” *Bean v. Bailey* 280 S.W. 3d 798.

2.)The Petitioner states Judge Carter has a personal interest in this case and the reason for allowing himself to engage in an inappropriate conversation with ADA Scruggs. Judge Carter should disqualify or recuse himself from the Petitioner’s post-conviction proceedings. The Petitioner states due to the fact he is a material witness in this upcoming hearing and his personal interest would prevent him from remaining impartial in his decision making (See Subpoena App. E, pg. 51-~~55~~.)

In a Tennessee Supreme Court ruling in *Brice Cook v. State of Tennessee* W2018-00237-SC-R11-PC in a matter of Post-conviction proceedings the Petitioner is entitled to have his Petition heard by a different judge other than the judge that presided over the trial proceedings. The judge should recuse himself even if the Petitioner doesn’t file a Motion to Recuse to ensure the fairness of the proceeding. In a Post-conviction hearing the trial judge should recuse himself even if the Petitioner does not file a recusal to ensure the Petitioner has the right to a full and fair hearing before a different decision maker.

Petitioner states he would be denied the right to a full & fair Post-conviction evidentiary hearing. Petitioner states “The right to a fair trial before an impartial tribunal is a fundamental constitutional right.” *State v Austin* 67 S.W. 3d. 447, 470 (Tenn. 2002).

3.)Furthermore, Petitioner filed a T.R.A.P 10 on June 9, 2021(W2021-00638-CCA-R10-PC) based on the facts that Mr. White’s Due Process Rights were being violated

based on Judge Carter's decision making in refusing to provide Mr. White rights to appear pro see and the right to necessary transcripts needed to properly prepare his post-conviction petition.

4.)Mr. White files this second Motion to Recuse Judge Robert Carter, Jr. due to the fact Judge Carter is a material witness in the upcoming evidentiary hearing. Petitioner served a subpoena for Judge Robert Carter's presence via USPS Certified Mail on October 13, 2021 by Certified Receipt # 70203160000204491807. On October 14, 2021 the subpoena was accepted and signed for by the Registered Agent for Service of Process at the Shelby County Criminal Justice Center's Mailroom (See Subpoena App. E, pg. 51-55¹).

The Tennessee Constitution Article VI Section 11 states:

"No judge of the Supreme or inferior courts shall preside on the trial of any cause in the event of which he may be interested..."

Furthermore,

"This is to guard against the prejudgment of the rights of the litigant and to avoid situations in which the litigant might have cause to conclude that the trial court had reached a pre-judged conclusion because of interest, partiality, or favor." State v. Austin 87 S.W. 3d at 470. "We have recognized that it is important to preserve the public's confidence in an impartial judiciary." Bd. of Prof'l Responsibility v. Slavin 145 S.W. 3d 538, 548 (Tenn. 2004). (Quoting Bean v. Bailey 280 S.W. 3d Tenn. 2009).

5.)The recusal of Judge Robert Carter is imperative due to the fact Judge Carter's testimony is important in the Petitioner establishing his IAC in the pending evidentiary

hearing. Petitioner states his trial attorney failed to discover the ex parte communication in his due diligence between ADA Chris Scruggs and Judge Robert Carter's engagement in the ex parte communication on May 16, 2016. The inappropriate ex parte communication continued into the circumstances of the case, Mr. White's prior criminal history and gang affiliation (See Transcripts App. C, pg. 17-23). Petitioner states that:

The Tennessee Supreme Court Rule 10, Cannon 3(B)(7)(a) states "a judge shall not initiate, permit, or consider ex parte communication outside the other parties on pending or impending matters." Tenn. Sup. Ct. R. 10, Cannon 3 (E)(1) states " a judge should disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, included but not limited to instances where : (a) the judge has a personal bias or prejudice concerning a party.." Davis 38 S.W. 3d at 564-65.

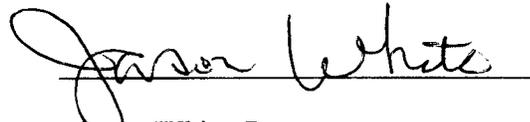
Petitioner states that Sharon Rondeau, a licensed journalist has been following this case and through her due diligence has written several articles that can be found at The Post and Email (<http://www.thepostemail.com>) that clearly raises questions if the judge could be fair and impartial in the Post-conviction proceeding (See attached Articles App. F (1) pg.⁵⁷ - ⁶³) and App. F. (2) pg.⁶⁴ - ⁷⁰.

Petitioner states that in the final conclusion on Judge Carter's ruling of the second Motion to Recuse if Judge Carter's decision is not to disqualify by giving a written decision. Mr. White be allowed to file an Interlocutory Appeal as a direct attack on Judge Carter's denial of the second Motion to Recuse.

WHEREFORE, Petitioner respectfully moves that Judge Robert “Bobby” Carter, Jr. remove and disqualify himself as judge over further decisions in Mr. White’s Post-Conviction proceeding. In pursuant to the Court, another judge be assigned to hear and decide on all Matters and proceedings in this case.

This 6 day of Oct, 2021.

By:


Jason White, Pro se

CERTIFICATE OF SERVICE

I, Jason White, Petitioner do hereby certify that a true and correct copy of the above and foregoing was mailed to the following:

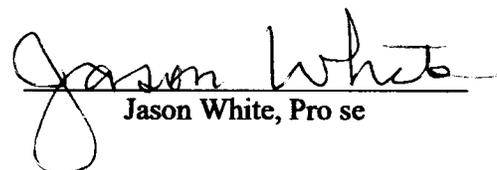
Leslie Byrd

District Attorney General's Office

201 Poplar Ave

Jackson, Tennessee 38103

This the 6 day of Oct, 2021.


Jason White, Pro se

APPENDIX

A.) Motion to Recuse..... Pg. 8-13

B.) Order of Denial..... Pg. 14-16

C.) Ex Parte Communication Transcripts..... Pg. 17-23

D.) Amended Post-conviction Petition.....Pg. 24-50

E.) Subpoena..... Pg. 51-55

F.) The Post and Email Articles..... Pg. 56-70

1.) Tennessee Sentences Man to Life in Prison in Bait-and Scheme (August 4, 2021) Pg. 57-63
<https://www.thepostemail.com/2021/08/04/tennessee-sentences-man-to-life-in-prison-in-bait-and-switch-scheme/>

2.) Shelby County, TN. Drug Conviction Hearing Rescheduled, but Will it Happen? Pg. 64-70
<https://www.thepostemail.com/2021/10/05/shelby-county-tn-drug-conviction-hearing-rescheduled-but-will-it-happen/>

APPENDIX A: MOTION TO RECUSE

In The Criminal Court of Shelby County, Tennessee for the Thirtieth
Judicial District Court at Memphis, Tennessee
Division III

17-01568
17-01568
17-01568

MOTION FOR RECUSAL

Jason White, Petitioner

Case # 17-02460

17-01568

v

State of Tennessee

Comes now Petitioner, Jason L White, Pro-se and moves to recuse the Honorable Robert "Bobby" Carter, Jr. for the reasons that throughout the criminal proceeding Judge Carter was prejudice and bias towards the Petitioner. Mr. White states on May 16, 2016 ADA Chris Scruggs and Judge Robert Carter, Jr. had an ex parte communication that began with a Transfer Order on Mr. White, but the ex parte communication continued into the circumstances of the case, on Mr. White's prior criminal history and gang affiliation (See attached transcripts).

- 1.) Mr. White states he was presented before Judge Robert Carter, Jr for Arraignment on June 2, 2016 without the knowledge of the criminal charges brought against him. Judge Carter appointed a Public Defender on the spot that had no knowledge of Mr. White and allowed the formal reading of the Indictment to be waived.
- 2.) Mr. White states Judge Carter, Jr. denied to hear to the following Pre-trial Motions filed by Mr. White's attorney On September 23, 2016 that would have protected Mr. White's constitutional rights. The motions filed were: Motion for Discovery and Inspection; Motion for Exculpatory Evidence; Motion for Disclosure of Impeaching Evidence; Motion to Extend Time With in Which to File Motions; Motion for Court to Order Sheriff's Department to Make Arrest History Inquiry Regarding

each State Witness; Motion for Inspection of Documents and Tangible Objects; Motion to Require State to Reveal any Agreements Entered into Between State and Prosecution Witnesses; Motion Reserving the Right to File Additional Motions in this Case; Defendant's Request for Notice of the State's Intention to use Evidence; Motion for Pre-Trial Hearings and for State to File Written Response to Pre-Trial Motions; Motion to Pre-Trial Written Notice of any Impeaching Conduct Relating to the Defendant; Motion to Witness Statements Prior to Trial; Motion to Suppress Evidence; Motion to Suppress Statement; Motion to Require State to Produce Electronic Recording of Preliminary Hearing; Motion to Advise the Court of Counsel's Appointment for the Purposes of the Trial Only; Motion to Pre-Trial Rule 609 Hearing.

- 3.) Mr. White states Judge Carter's failure to have Mr. White present at Co-defendant's Cole Suppress Hearing when he was aware this was a consolidated case. This denied Mr. White the right to confront the evidence brought against him when a Motion to Suppress was filed on September 23, 2016.
- 4.) Mr. White states Judge Carter, Jr. further showed prejudice in denying Mr. White to be heard or to investigate into a conflict of interest on July 10, 2017 between Mr. White and his attorney Claiborne Ferguson when Judge Carter was aware of the conflict. Judge Carter's lack of judicial responsibilities denied Mr. White to adequate counsel by failing to address Mr. Ferguson on his lack of representation when Mr. White personally addressed Judge Carter during the trial.
- 5.) Mr. White states that due to the ex parte communication between ADA Chris Scruggs and Judge Carter who took a personal interest in the case/defendant that created a prejudice and bias opinion towards Mr. White during the trial process.
- 6.) Mr. White states he filed a Petition pertaining to constitutional

violations prior to sentencing that clearly showed Mr. White was taken to trial on charges he had not been formally indicted on. Judge Carter denied to hear to. Mr. White's Petition that would have shown the courts that he was convicted of charges he was never indicted on and sentenced to charges he was never convicted of. Mr. White had requested an investigation into the original charges imposed by the Grand Jury, but Judge Carter denied and ignored Mr. White's repeated concerns of the conflicting charges brought against him.

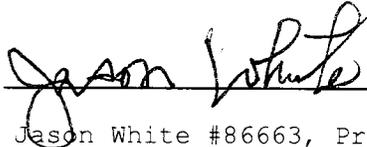
7.) Mr. White states on July 10, 2017, Judge Carter told the jury that he had no knowledge or facts in this case, when in fact Judge Carter and ADA Chris Scruggs had an ex parte communication on circumstances pertaining to the case and on specifics of Mr. White's criminal history and gang affiliation on May 16, 2016. Judge Carter did not disclose that he had detailed communication with ADA Scruggs pertaining to this case as set out in the Rules of Judicial Conduct.

Mr. White states the accumulation of Judge Carter's actions violated Mr. White's constitutional rights to have his case heard by an impartial decision maker. The purpose of the provisions set out in the Code of Judicial Conduct to protect against prejudgment of the accused rights and to avoid situations where parties might believe that a court reached a conclusion because of interest or partiality. According to the Code of Judicial Conduct the Defendant is entitled to have his case decided by a judge who can approach the case in an objective and impartial manner, and a judge that possesses personal knowledge of evidentiary facts that are in dispute in the case is most likely not to be able to meet the criterion. In the knowledge Judge Carter acquired and failed to disclose on the ex parte

communication with ADA Chris Scruggs, both state and federal authorities as well as the Code of Judicial Conduct, conclude disqualification of the judge.

WHEREFORE, Petitioner respectfully moves and prays that the Honorable Robert "Bobby" Carter, Jr. remove and disqualify himself as judge over further decisions in Mr. White's Post-Conviction proceeding. In pursuant to the Court, another judge be assigned to hear and decide on all matters in this case.

This 14th day of May, 2020

A handwritten signature in black ink that reads "Jason White". The signature is written in a cursive style and is positioned above a solid horizontal line.

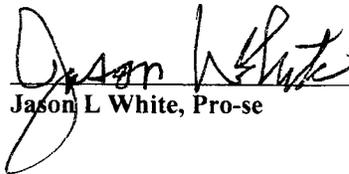
Jason White #86663, Pro-se
NENMCF
185 Doctor Michael Jenkins Rd
Clayton, NM 88415

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing document has been served via hand delivery or U.S. Mail to the following:

District Attorney General's Office
201 Poplar Ave
Memphis, TN. 38103

This 14th day of May, 2020.



Jason L White, Pro-se

APPENDIX B: ORDER OF DENIAL

**IN THE CRIMINAL COURT
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS**

DIVISION III

**JASON WHITE,
PETITIONER,**

VS.

**STATE OF TENNESSEE,
RESPONDENT.**

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INDICTMENT NO.: 17-01568

ORDER DENYING MOTION FOR RECUSAL

This cause came to be heard on the Petitioner's Motion for Recusal filed on May 15, 2020, and upon the entire record in this cause.

FROM ALL OF WHICH IT APPEARS TO THE COURT AS FOLLOWS:

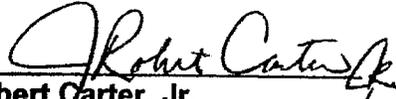
Petitioner has filed a Motion for Recusal in this cause. Pursuant to Tennessee Supreme Court Rule 10 B, no action has been taken on this matter pending the disposal of Petitioner's Motion.

As a basis for the Motion, Petitioner cites this court's rulings during the pre-trial portion of Petitioner's case, at the trial and even after the trial. Such adverse rulings do not create a basis for this court to recuse itself. All of the rulings were able to be (and generally were) the subject of Petitioner's direct appeal.

Petitioner further complains of what he calls an unfair ex parte communication between the State's attorney and the court. He refers to a brief colloquy in open court that accompanied the entry of an Order to transport the Petitioner from the Tennessee Department of Corrections back to Shelby County for purpose of arrangement on this charge. (Petitioner was serving a separate sentence when the actions that gave rise to this case occurred.) This type of communication is specifically allowed for purposes of "scheduling, administrative, or emergency purposes" and ultimately concerned allegations that were to be (and were) determined by the trier of fact which was a jury in this case. There was simply no prejudice to Petitioner.

In the case at hand this court has no prejudice against or partiality for the parties.
Accordingly, the Motion to Recuse is hereby denied.

This is the 28 day of August, 2020.



J. Robert Carter, Jr.
Judge - Division III

Filed 8-28-20
Heidi Kuhn, Clerk
BY JK D.C.

APPENDIX C: EX PARTE COMMUNICATION TRANSCRIPTS

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IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT

STATE OF TENNESSEE,)
)
vs.)
JASON WHITE,)
Defendant.)

Case No. 16-02794

ORIGINAL

TRANSFER ORDER
MAY 16TH, 2016

THE HONORABLE JUDGE BOBBY CARTER, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:

Chris Scruggs
Assistant District Attorney General
District Attorney General's Office
201 Poplar Avenue - Eleventh Floor
Memphis, TN 38103

Reported by:
KATIELLEN HODGE
Court Reporter

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1 IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

2 DIVISION 3

3 STATE OF TENNESSEE,)

4)

5 vs.) Case No. 16-02794

6 JASON WHITE,)

7 Defendant.)

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9 This cause came to be heard and was heard

10 on the 16th day of May, 2019, before the Honorable

11 Bobby Carter, Judge, holding the Criminal Court for

12 Shelby County, at Memphis, Tennessee, and the

13 following proceedings were had, to-wit:

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15 MR. SCRUGGS: On a matter not on the

16 Court's calendar. It is scheduled for June the 2nd

17 is a James White (sic) and Kristina Cole. James

18 White is in a unique situation in that he is an

19 inmate at the Riverbend Maximum Security Prison in

20 Nashville. And I'm prepared -- I prepared an order

21 to have him transported if the Clerk's Office would

22 be so kind to transmit that fugitive so that they

23 will go get him.

24 THE COURT: I will sign the order and

25 hopefully he'll be here for his arraignment day.

1 MR. SCRUGGS: Okay. I think the Court
2 will enjoy the facts on this case. I've never seen
3 anything quite like it.

4 THE COURT: Conspiracy and in a drug free
5 school zone.

6 MR. SCRUGGS: Allegedly Mr. White ordered
7 half a kilo of methamphetamine from another inmate
8 in California who arranged to have it shipped FedEx
9 to his fiance's house in Bartlett, and of course, it
10 was unaccepted.

11 THE COURT: Is the shipper not involved in
12 this?

13 MR. SCRUGGS: We do not know who the
14 shipper is.

15 THE COURT: Amazon.com I guess.
16 Everything else --

17 MR. SCRUGGS: I think it'd be fun to find
18 --

19 THE COURT: -- everything else is
20 available. I guess they could always do the classic
21 surprise -- you know --

22 MR. SCRUGGS: Well, it would have been --
23 it might have been encrypted had she not been
24 getting cellphone calls from Mr. White.

25 THE COURT: Updates, huh?

1 MR. SCRUGGS: The whole time and while
2 police were there.

3 THE COURT: What's he doing time for?

4 MR. SCRUGGS: Especially agg kidnapping,
5 especially agg robbery. He's apparently a ranking
6 member --

7 THE COURT: Got a quite -- got a quite of
8 a resume.

9 MR. SCRUGGS: He's a ranking member of the
10 Vice Lords in prison.

11 THE COURT: Well --

12 MR. SCRUGGS: So he's -- he's very
13 comfortable. Have a good afternoon, Judge.

14 (END OF PROCEEDINGS WERE HEARD IN THIS
15 MATTER MAY 16TH, 2016.)

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1 understanding and ability of all the evidence that
2 was heard in this cause in Division 3 of the
3 Criminal Court for Shelby County, Tennessee, before
4 the Honorable Bobby Carter, Presiding Judge, on the
5 16th day of May, 2016.

6 I do further certify that I am neither of kin,
7 counsel nor interest to any party hereto.

8 Dated this 27th day of February, 2020

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KATIELLEN HODGE
Court Reporter



APPENDIX: D AMENDED POST-CONVICTION PETITION

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE FOR
THE THIRTIETH JUDICIAL DISTRICT
DIVISION III

FILED
MAR 31 AM 11:36
CLERK

JASON L. WHITE,
Petitioner

VS.

Docket No. C1702460/ 17-01568

STATE OF TENNESSEE,
Respondent

AMENDED PETITION FOR POST CONVICTION RELIEF

Statement of the Case

Jason White was taken to trial and convicted on July 14, 2017 in the Shelby County Criminal Court Division III on charges of Conspiracy: Unlawful Possession of a Controlled Substance with Intent to Sell/Deliver, to wit; Methamphetamine over Three Hundred Grams in a Drug Free Zone on Count 1 (App. Vol. 2 P. 46-47) and Count 2 (App. Vol. 2, P. 48-49). On October 11, 2017 Judge Robert Carter, Jr. sentenced Mr. White to 60 years in the Tennessee Department of Corrections.

Statement of the Facts

At trial, the State alleged that Mr. White conspired with co-defendants Kristina Cole and Montez Mullins in having a package containing methamphetamine over 300 grams sent through Fed Ex tracking # 8088570733748 by an unidentified person in Visalia, California.

According to the State the package was address to Bailey Green at 2552 Jenwood St. Bartlett TN, 38134. The State's key witness Detective Mark Gaia testified that upon a controlled

delivery of the package containing methamphetamine by the Bartlett Police Department.

Detective Mark Gaia testified that Ms. Cole tracked the package, then sent Mr. White three text messages in reference to the package being delivered on a contra-band cell phone at Riverbend Maximum Security Prison where Mr. White was housed. Detective Mark Gaia further testified that during the search of Ms. Cole's residence a picture of Mr. White was found on Ms. Cole's bedside table along with numerous letter from Mr. White (See App. Vol. 8 Pg. 223). Detective Mark Gaia further testified that Mr. White's brother Dustin White and fiancé Jazzavor McEntrye pulled up at the residence and that according to Detective Mark Gaia's testimony a 615-917-3749 number was calling Dustin White's phone, being the same number that was calling Ms. Cole phone. The State did not introduce testimony from Dustin White or Jazzavor McEntrye but introduced into evidence a small bag of marijuana seized from Dustin White according to Detective Mark Gaia's testimony. The State alleged that in Mr. White's brother, Dustin White showing up at the residence with the same 615-917-3749 number on his phone as the same number calling Ms. Cole phone.

The State alleged that Ms. Cole called Mr. White's mother Kimberly White at 901-208-9195 after being arrested and while she was in jail. Detective Mark Gaia testified that his investigation showed the number Ms. Cole called was listed to Kimberly White. These allegations made by the State were made through the testimony of the State's key witness lead Detective Mark Gaia.

The Petitioner, Jason White was indicted on April 21, 2016. A Capias was issued on him by the said Clerk Richard L Desaussare III stating he witnessed a True Bill of Indictment against Jason White for Two Counts of Conspiracy-Promote Manuf Methamphetamine T.C.A. 39-17-433 (See App. Vol. 1 Pg. 1-2). Jason White was brought before the court, two months later on June 2, 2016. Upon arrival at the Shelby County Jail, Mr. White was taken directly into the courtroom without being served with any information or without being advised of his rights. Mr. White was presented in front of Judge Robert "Bobby" Carter, Jr. who appointed the public Defender Robert Felkner on the spot to assist in Mr. White's arraignment. Mr. Felkner proceeded to waive the formal reading of the Indictment and entered a plea of not guilty, prior to speaking

with Mr. White about his charges (See attached Arraignment Transcripts). Mr. White was booked into the Shelby County Jail on charges of Conspiracy-Promote Manuf Methamphetamine T.C.A. 39-17-433 (See attached Booking Sheet, this was not part of the record).

On February 21, 2017 the first trial date set, Mr. Ferguson had put in a transfer order for Montez Mullins to be brought from North East Correctional Prison as a witness for defense (See Transfer Order, this was not made part of the record). Once the State became aware of Mr. Mullins, the State asked for a continuance. Detective Robert Christian was sent by the State to take a statement from Mr. Mullins. In the statement Mr. Mullins took full responsibility of arraigning to have a package of methamphetamine sent to Ms. Cole residence. According to Mr. Mullins statement he told Ms. Cole the package would contain jewelry for his mother. Mr. Mullins stated that Mr. White had no knowledge of the package and nothing to do with this arrangement. The State proceeded to make Mr. Mullins a Co-defendant by re-indicting the same charges from Indictment # 16-02794 to Indictment # 17-01568 only to add Mr. Mullins to the Indictment (See Indictment # 16-02794 and Indictment # 17-01568). Mr. Mullins did not take the stand at trial because Mr. Ferguson and Co-Defendant Cole's attorney Ms. Simmons convinced him not to take the stand. The State presented testimony from Detective Robert Christian on the statement he took from Mr. Mullins. The State played the Out of Court Statement from Mr. Mullins, then allowed Detective Christian to testify to his opinion that Mr. Mullins was not being truthful in his statement.

On July 10, 2017 Mr. White was brought from Riverbend Maximum Security Prison to court the morning for jury trial to begin. Prior to jury selection, Mr. Ferguson asked the courtroom Deputy to speak with Mr. White. The Deputy advised Mr. Ferguson there was no rooms available, but he could bring Mr. White into the courtroom. Mr. Ferguson told the Deputy he could speak with Mr. White in the hallway of the holding area, the Deputy pulled Mr. White into the hallway to speak with Mr. Ferguson. The deputy returned to the courtroom leaving the doorway cracked, but after a few minutes he opened the door checking on the attorneys and clients in the holding area. Mr. Ferguson and Mr. White were still engaged in conversation, so the Deputy stepped back into the courtroom. A couple minutes later Mr. Ferguson was heard

yelling “Jason get your hands off me”, “he choked me that’s a felony”. Mr. Ferguson stepped back into the courtroom and the Deputy proceeded to question Mr. White on what had happened. Mr. White explained to the Deputy that he had informed Mr. Ferguson that his family was going to sue him. The Deputy advised that he had observed Mr. Ferguson in courtroom after the incident that he didn’t believe Mr. Ferguson had been a victim of assault (See attached Incident Report App. Vol. 1 Pg. 64-66, this was not made a part of the record).

Once trial began Mr. White tired numerous times to talk with Mr. Ferguson, Mr. White was seated several feet behind Mr. Ferguson in the courtroom. This making communication between Mr. Ferguson and Mr. White difficult during trial. Mr. White stepped behind Mr. Ferguson asking him to lodge an objection, Mr. Ferguson advised Mr. White that if he did not sit down he would have him removed from the courtroom. On July 11, 2017 when Mr. White was brought into the courtroom he addressed the trial court stating he requested a “Motion to Severance” due to Ms. Cole’s attorney playing the blame game in her opening statement. Later in asking for a Motion to be filed due to the authentication on the fact that during trial Detective Mark Gaia testified to text messages and his opinion belief that Mr. White was on the receiving end of the text messages sent to the 615-917-3749. Detective Mark Gaia had no personal knowledge to authenticate, even after Mr. White stood up and objected. Mr. Ferguson failed to communicate with Mr. White or take any actions after Mr. White addressed his concerns.

During the trial process the State presented Internal Affairs Officer from Riverbend Maximum Security Prison Andrew Brown. I.A. Brown testified that on February 3, 2016, the same day the search warrant was executed at 2552 Jenwood St., Bartlett, TN 38134 he was contacted by Detective Mark Gaia advising him of the incident with Ms. Cole and requested that inmate Jason White’s cell be searched. I.A. Brown testified that after Detective Gaia advised him of the situation within 30 minutes a team at the prison went to Mr. White’s cell, that before entering the cell he observed Mr. White flushing a cell phone down the toilet, and he was able to retrieve the cell phone charger, but no evidence was introduced during trial. The state alleged Mr. White was in possession of a contra band cell phone, that the number was 615-917-3749 being the same number Ms. Cole had sent 3 text messages to after the delivery of the package

containing methamphetamine. When the 901-208-9195 phone bill Detective Gaia testified as being listed to Kimberly White will reflect the 615-917-3749 number was still in use on February 3rd and 4th, 2016 (See attached phone bill, this was not made a part of record). The State further questioned I.A. Brown on his opinion of what an inmate would need access to Green Dot, and Pay-Pal cards within the prison system. No further testimony or evidence was introduced to corroborate I.A. Brown's testimony.

On September 23, 2016 Mr. White's family hired attorney Claiborne Ferguson, who signed onto the case for the charge of Conspiracy-Promote Manuf Methamphetamine T.C.A. 39-17-433 (See attached Contract). On September 23, 2016, Mr. Ferguson filed numerous Pre-trial Motions for Mr. White, then Mr. Ferguson withdrew these Motions without giving Mr. White any explanation of why these Motions would not be heard. At this point Mr. White started filing complaints against Claiborne Ferguson with the Board of Professional Responsibility (See attached letters, which was not a part of the record). The numerous letters written to the Board of Professional Responsibility during the pre-trial process was in hopes that Mr. Ferguson would proceed in taking proper actions in preparing a defense for Mr. White by investigating, interviewing state witnesses and attacking the State's alleged case on every point.

According to misleading facts presented by the State in testimonies, and in evidence the Fed Ex package containing methamphetamine was never sent from an unidentified person, but was sent by Detective Adam Collins in Visalia, California through Fed Ex # 8088570733748 to Detective Mark Gaia in care of the Bartlett Police Department. Detective Mark Gaia who took the Fed Ex package out of the UPS box, the address on the Fed Ex package containing methamphetamine was addressed to Bailey Green 2552 Linwood St. Bartlett, TN 38134. Detective Gaia testified that upon receiving the package containing the methamphetamine, he found no address existed being 2552 Linwood St. Bartlett, TN 38134, however; there was a 2552 Jenwood St., Bartlett, TN 38134. In obtaining a sworn Affidavit (See attached Affidavit, this was not made part of the record) Detective Mark Gaia stated the delivery address was 2552 Jenwood St., Bartlett, TN 38134, never mentioning the fact that the Fed Ex shipping label showed the package containing methamphetamine was address to be 2552 Linwood St. Bartlett, TN 38134.

During trial Detective Mark Gaia testified upon receiving the package containing methamphetamine through UPS tracking #J451-270-4671 he contacted Detective Adam Collins in Visalia, California who looked at the hand written shipping label and stated the address was 2552 Jenwood St., Bartlett, TN 38134 that the Fed Ex employee had entered the address incorrectly. The State introduced the handwritten shipping label and shipping bill as evidence during trial that clearly reads 2552 Linwood St., Bartlett, TN 38134 (See App. Vol. 3 Ex. 8 and App. Vol. 3 Ex. 5). Detective Adams Collins was not presented during trial to testify or for cross examination.

During a controlled delivery the package containing methamphetamine was placed on Ms. Cole porch, Detective Mark Gaia executed the search warrant once Ms. Cole was observed taking the package inside her residence. Upon entering the residence the package containing methamphetamine was sitting inside the door unopened. Detective Mark Gaia testified that Ms. Cole agreed to the search of her computer, then testified that Ms. Cole was tracking the package containing methamphetamine by Fed Ex # 8088570733748. The State introduced photos of a computer browser history showing the website address, omitting the screen portion showing the time the photos were accessed (See App. Vol. 3 Ex. 13). Detective Mark Gaia testified that Ms. Cole's phone was repeatedly ringing with a 615-917-3749 during the search displaying "Boo other line" on cell phone screen.

Further testifying that two people showed up, identified as Dustin White, along with his fiancé Jazzavor McEntyre. According to testimony of Detective Mark Gaia, Dustin White's phone was repeatedly ringing with the same 615-917-3749 that was calling Ms. Cole and the screen displayed "J". Dustin White nor Jazzavor McEntyre were arrested or called by the State as witnesses. No cell phone showing the 615-917-3749 number was introduced as evidence from Dustin White. Jazzavor McEntyre did provide an Affidavit to Claiborne Ferguson stating Detective Mark Gaia made false statements in reference to their arrival. Jazzavor McEntyre told Mr. Ferguson she was willing to testify (see attached Affidavit, this was not made part of the record at trial).

During trial Detective Mark Gaia testified that Ms. Cole had sent Mr. White three text

messages after the package containing methamphetamine was placed on her front door and took the package inside. On cross examination Detective Mark Gaia was forced to admit he had sent the third text message from Ms. Cole's cell phone. In discovering the fact that Detective Mark Gaia had used Ms. Cole's cell phone to send a text message pertaining to the package containing methamphetamine, Detective Mark Gaia was asked if there was anything else that needed to be clarified for the jury in reference to the text messages introduced as evidence against Mr. White. Detective Mark Gaia answered "No". "No not to my knowledge". When in fact Ms. Cole was booked into the jail at 15:30 hr. according to her booking sheet, the State introduced the first text message being sent at 15:38 (See App. Vol. 3 Ex. 31) after Ms. Cole was booked into jail (App. Vol. 1 Pg. 13-14 See attached Booking Sheet, this was not made part of the record). On February 4, 2016 the day after the text messages were sent from Ms. Cole's cell phone Detective Mark Gaia obtained an Affidavit for a search on the same cell phone and two additional cell phones (See attached Affidavit, this was not made a part of the record).

Detective Mark Gaia testified that during the search of Ms. Cole's residence, a photo was found on her bedside table that Ms. Cole identified as Timothy Smith. Detective Mark Gaia used this photo to identify Mr. White, and began targeting Mr. White in his investigation. Ms. Cole did not testify. Detective Mark Gaia testified that during his investigation in this case Ms. Cole made calls from the Shelby County Jail to a 901-208-9195 number and that this number was shown to be listed to Mr. White's mother, Kimberly White. Detective Mark Gaia further testified Ms. Cole was speaking to an individual name Timothy or Timmy, according to Detective Mark Gaia this was the same individual Ms. Cole identified in the photo during the search of her residence to be Mr. White. Detective Mark Gaia was not truthful in his investigation, the 901-208-9195 was not listed to Kimberly White, but was listed to Michael Underwood (See attached Phone Bill, this was not made part of the record).

Mr. White clearly points out the fact that lead Detective Mark Gaia was the only witness for the State that could testify to the evidence pertaining to the origination of the Fed Ex package containing methamphetamine from Visalia, California through UPS tracking # J451-270-4671 to himself at the Bartlett Police Department, who then placed the package containing

methamphetamine at the wrong address. Once the package was in the residence of 2552 Jenwood St., Detective Gaia proceeded to execute a search warrant, then planted text messages in Ms. Cole's cell phone after she was booked into jail. Detective Mark Gaia was the only State witness to testify to evidence that Ms. Cole tracked the Fed Ex package containing methamphetamine by introducing a photo of a computer screen with no dates or access information. Detective Mark Gaia failed to disclose facts that the package was not delivered by Fed Ex, but by UPS # J451-270-4671, then lied in a sworn affidavit as to the delivery address in order to have over 300 hundred grams of methamphetamine delivered to 2552 Jenwood St., St Bartlett, TN 38134. During the search of the residence Detective Mark Gaia discovered the photo of Mr. White along with letters from Riverbend Maximum Security Prison, making him the main target of his investigation.

Mr. Whites states that during his due diligence for his Post-Conviction Petition and researching into court dates and transcripts a Transfer Order on May 16, 2016 was presented in Judge Robert Carter's court by the District Attorney Chris Scruggs. The Transfer Order transcripts revealed that during this courtroom appearance, DA Scruggs was informing the court of a Transfer Order that needed to be signed to bring Mr. White in for his Arraignment. The transcripts reflect that once the Transfer Order was addressed, DA Scruggs and Judge Carter proceeded into an ex-parte communication. The ex parte communication went into details of the Mr. White's pending case where DA Scruggs went into details of the pending evidence against Mr. White. The state's theory of the alleged crime, surrounding details of state testimony, Mr. White's past criminal record, and his opinion based gang affliction. Mr. White pro se filed a Motion to Recuse upon receiving the Transfer Order to include the ex parte communication. The Motion to Recuse was filed timely upon discovering the transcripts (See attached Transfer Order with Ex Parte Communication, that was not made part of the record).

Argument

The Petitioner, Mr. White comes before this court to present facts that Mr. White was denied effective assistance of counsel, that in the actions of the trial counsel that was deficit and denied Mr. White the right to a fair trial. In Mr. Ferguson failure to take steps prior to trial or

during trial denied Mr. White effective assistance of counsel. That under the Post -Conviction Procedure Act (PCPA) a petitioner is entitled to relief whenever his “conviction or sentences is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States” Tenn. Code Ann. 40-30-103. Mr. White is entitled to relief under the PCPA because his due process and counsel’s failure to provide effective assistance of counsel in violation of Mr. White’s 6th, and 14th Amendment right to the United States Constitution. Mr. White states he is entitled to relief due to Trial Counsel’s accumulative errors prior to trial and during trial.

1.) Petitioner was denied effective assistance of Counsel during his criminal proceedings.

A).Counsel failed to advocate for Mr. White by failing to ask for a continuance during the Arraignment.

Mr. White was presented for Arraignment on June 2, 2016, a critical stage of the proceeding; however, counsel failure to ask for a continuance to advise Mr. White of the charges he was pleading to on the Indictment. Mr. Felkner should have been aware of Mr. White’s charges and in failing to advise Mr. White of the charges brought against him by discussing the charges with Mr. White prior to him entering a plea. In Mr. Felkner’s failure to properly advocate Mr. White in entering a plea to a Class A felony when a Capias for Mr. White showed the charges to be a Class E felony In Public Defender Felkner’s failure in asking for a continuance prior to the Arraignment, it would have been discovered that a Capias was issued for Conspiracy-Promote Manuf Methamphetamine T.C.A. 39-17-433 for Mr. White and he was booked into the Shelby County Jail for Conspiracy-Promote Manuf Methamphetamine T.C.A. 39-17-433. Mr. White was brought before the judge prior to being formally processed on June 2, 2016, where Mr. Felkner waived the formal reading of the Indictment and entered a not guilty plea. Mr. Felkner’s actions were highly prejudice and in violation of Mr. White’s rights of understanding the charges brought against him. In Mr. Felkner’s failure to properly advocate for Mr. White by properly advising and making sure Mr. White understood the charges brought against during the Arraignment fell below the ABA standards that denied Mr. White the right to be advised of his criminal charges (See attached Capias, Booking Sheet, and

Arrestment Transcripts, that was not made a part of the record).

B.) The lawyer failed to file a Pretrial Motion to challenge the trial court's jurisdiction to convict or sentence Mr. White.

In counsel's failure to challenge that Mr. White was taken to trial on charges he was never arrested on, but was taken to trial, convicted, and sentenced to different charges. A Capias issued on April 22, 2016 signed by the Deputy Clerk stating Richard L. Desaussare, III Criminal Court Clerk, witnessing the True Bill of Indictment of Conspiracy-Promote Manuf Methamphetamine T.C.A. 39-17-433. Mr. White was booked into the Shelby County Jail on June 2, 2016 according to the Mr. White's Booking Sheet. The trial court convicted Mr. White on different charges than reflected in the Pre-sentence Report used during Sentencing, Mr. White's Judgement Sheet as well as the Shelby County Criminal Court records all reflect that Mr. White was indicted, convicted and sentence to Conspiracy - Promote Manuf Methamphetamine T.C.A 39-17-433 (See attached Capias, Booking sheet, Pre-sentence Report, and Judgement Sheet). Mr. Ferguson was hired to represent Mr. White on charges of T.C.A. 39-17-433 Conspiracy-Promote Manuf Methamphetamine, which was a different charge than on the actual Indictment 16-02794 (See attached Contract, this was not made part of the record). Mr. White made Mr. Ferguson aware of the discrepancies in the charges he was arrested on and the charges he was arraigned on in the Indictment. That Mr. White was arrested for T.C.A 39-17-433, but was arranged on a different charge of T.C.A 39-17-434. In Mr. Ferguson's failure to challenge the charges against Mr. White prior to trial, deprived Mr. White of his rights in understanding the charges brought against him. Mr. Ferguson's actions in not moving to challenge the charges against Mr. White, this fell way below duty to protect Mr. White's constitutional rights against the wrongful prosecution. In Mr. Ferguson's lack of actions to bring awareness to the trial court to establish the charges brought against Mr. White was highly prejudice and denied Mr. White the right to a fundamental fairness at trial, and a wrongful prosecution that could have resulted in a different outcome at trial (See attached Capias, Booking sheet, Pre-Sentence Report and Judgement Sheet).

C.) In Counsel's failure to follow through with Pretrial Motions to be heard by the Court.

Attorney Claiborne Ferguson filed seventeen Pretrial Motions on September 23 2016 on

Mr. White's behalf. These Pretrial Motions were never heard by the court due to Mr. Ferguson incompetent and lack of responsibility to properly advocate for Mr. White during the criminal proceedings. The Pretrial Motions would have raised strong constitutional issues, but due to Mr. Ferguson's actions Mr. White started writing numerous letters to the Board of Professional Responsibility, in order to bring awareness to the fact that Mr. Ferguson refused to follow through with the Motion to Suppress Evidence, Motions to Suppress Statements, Motion for Pretrial Rule 609 Hearing, Motion for Exculpatory Evidence, Motion for Impeaching Evidence, Motion to Extend Time within which to File Motions, Motion for Court to Order Sheriff's Department to make Arrest Inquiry Regarding each State Witness, Motion for Inspection of Documents and Tangible Objects, Motion to Require the State to Reveal any Agreements entered between State and Prosecution Witnesses, Motion Reversing the Right to File Additional Motions in this case, Defendant's Request for Notice of the State's Intention to Use Evidence, Motion for Pre-trial Hearings and for State to File Written Response to Pre-trial Motions, Motion for Pretrial Written Notice of any Impeaching Conduct Relating to the Defendant, Motion for Witness Statements prior to Trial, Motion to Require the State to Produce Electronic Recording of Preliminary Hearing, Motion to Advise the Court of Counsel's Appointment for the Purpose of Trial Only (See attached Motions). In Counsel's decision to withdraw these motions would go against logic, further it would be against the ABA Standards 4-3.6 in taking prompt action to protect the accused. The action Mr. Ferguson took fail below competent that counsel is bound to. Further showing counsel abandon the opportunity to raise issues to subject the Prosecution's case to meaningful adversarial testing. Mr. White was denied these rights due to Mr. Ferguson's poor decision to properly advocate for Mr. White.

D.) In Counsel's failure to withdraw due to a Conflict of Interest

Mr. Ferguson, should have withdrawn from representing Mr. White due to a clear Conflict of Interest that created a distrust between Mr. White and Mr. Ferguson. The ABA Standard 4-3.1 Establishment of Relationship:

Defense counsel should seek to establish a relationship of trust and confidence with the accused and should discuss the objectives of the representation.

Here counsel failed to establish such a relationship by refusing to follow through with any request that Mr. White made to help assist in his defense to the point Mr. White started to make complaints to the Board of Professional Responsibility. The ABA Standard 4-3.5 Conflict of Interest:

Defense counsel should not permit his or her professional judgment or obligation to be affected by his or her own political, financial, business, property, or personal interests.

Mr. White had informed Mr. Ferguson on numerous times that he would sue him for not doing his job. The morning of trial July 10, 2017, Mr. White informed Mr. Ferguson once again that he and his family were going to sue him. In an Incident Report taken by the Shelby County Deputy Jones, D. #9578 on the morning of July 10, 2017 states "Mr. Ferguson made a loud outburst stating, Jason get your fucking hands off me". Deputy Jones that was assigned to the courtroom stepped into the hallway and asked Mr. Ferguson what was going on Mr. Ferguson stated that Mr. White had choked him and that was a felony". In investigating into the situation Deputy Jones stated in the Incident Report that he did not believe Mr. Ferguson was victimized. (See attached Incident Report, not made a part of the record). Mr. Ferguson informed the trial court that Mr. White had assaulted him, but agreed to continue to represent Mr. White without Mr. White's consent. In Ferguson's failure to remove himself from the case, this deprived Mr. White the opportunity to counsel that he had trust and have confidence in. Mr. White's confidence in Mr. Ferguson's representation became clearer during trial when Mr. Ferguson refused to make objections on Mr. White's behalf. The record will clearly show a breakdown in communication, between attorney and client. The Conflict of Interest effected Mr. Ferguson's representation, due to Mr. White having to address the court on his behalf (App. Vol. 8 Pg. 199-201). Mr. Ferguson had an ethical obligation set by the ABA Standards to defend Mr. White and Mr. White had a constitutional right to counsel free of conflict. These actions were prejudice towards Mr. White and denied him the right to a fair trial.

E.) In Counsel's failure to do Pretrial Investigation into Documentary Evidence to Impeach the State Key Witness Detective Mark Gaia

The heart of the State's case was testimony given by lead Detective Mark Gaia who testified to the surrounding facts and evidence. Detective Mark Gaia testified that after the

package containing methamphetamine was delivered to Ms. Cole resident, she placed the package inside, and sent three text messages to 615-917-3749. Detective Mark Gaia further testified that during the search that Mr. White's brother, Dustin White and his fiance, Jazzavor McEntyre showed up at Ms. Cole's residence. Detective Gaia testified that Dustin White's cell phone was blowing up with the same 615-917-3749 number. This number displayed a "J" that was used during trial to identify Mr. White as being in possession of this number. The same 615-917-3749 number the State introduced text messages sent from Ms. Cole's cell phone after the arrival of the package containing methamphetamine. Detective Gaia found a picture later identified as Mr. White, along with letters at Ms. Cole resident from Mr. White at Riverbend Maximum Security Prison. Detective Gaia testified he then contacted Internal Affairs Andrew Brown, who testified that he saw Mr. White flush a cell phone on February 3, 2016. Detective Gaia testified that while Ms. Cole's was at Jail East she called 901-208-9195, speaking to a third party Ms. Cole identified as Timothy. Detective Gaia testified the 901-208-9195 belonged to Mr. White's mother Kimberly White. If Mr. Ferguson would have properly investigated in the preparation through diligent, he would have determined a proper defense by impeaching Detective Gaia testimony that would have given reasonable doubt in the State's case.

First: It was proven during trial on cross examination by Co-defendant Cole's attorney that Detective Mark Gaia had sent the third text message "What do you want me to do with it" from Ms. Cole cell phone to the 615-917-3749. In Mr. Ferguson asking Detective Gaia if there was anything else he needed to clarify about the text messages he replied "No, sir. Not to my knowledge". If Mr. Ferguson would have investigated, he would have Ms. Cole's booking sheet that would show she was arrested or booked in at 15:30 hr. according to her booking sheet and the first text message to the 615-917-3749 was sent out at 15:38 hr., the second text at 15:39 (See attached Booking Sheet, not made a part of the record and Text messages, App Vol 3. Exh. 31 Pg. 33).

Second: In Detective Gaia testified that Mr. White was on the receiving end of the 615-917-3749 number due to the fact Dustin White showed up at the residence with the same 615-917-3749 number in his phone saved under "J". In Mr. Ferguson failure to investigate by

interviewing Dustin White and Jazzavor McEntyre, he would have learned that Detective Gaia testimony was not true. Ms. McEntyre signed a sworn affidavit to these facts (See attached Affidavit, that was not made part of the record). In Mr. Ferguson's failure to properly investigate, interview, and prepare a defense for Mr. White, no witnesses for the defense was presented after Mr. White told Mr. Ferguson of their willingness to come forward to testify.

Third: Detective Gaia's testified Mr. White was on the receiving end of the text messages sent to the 615-917-3749 number, that I.A. Brown witnessed Mr. White flushing a cell phone down the toilet on February 3, 2016. Mr. Ferguson's failure to introduce a cell phone bill that would have shown the 615-917-3749 number was still in use on February 4, 2016 (See attached phone bill not made a part of the record). If Mr. Ferguson had introduced this documentary evidence that would have been used to under mind the State's case and the State's key witness Detective Mark Gaia. His actions was objectively unreasonable and prejudice towards Mr. White

Fourth: Detective Gaia testified during his investigation it was determined the 901-208-9195 number Ms. Cole was calling from Jail East was listed to Mr. White's mother Kimberly White. This testimony was given in order for the State to prove Timothy was Mr. White due to Kimberly White being his mother. If Mr. Ferguson had properly investigated, he would have introduced the 901-208-9195 cell phone bill to prove the 901-208-9195 number was not listed to Kimberly White, but to Michael Underwood (See attached phone bill not made part of the record.). The action taken by Mr. Ferguson clearly denied Mr. White adequate counsel by failing to subject the prosecution's case to meaningful adversarial testing. If Mr. Ferguson had properly prepared in preparation through diligent the documentary evidence would have not only impeached Detective Gaia testimony or just under minded the State's case. It would have destroyed the State's Whole Theory.

F.) In Counsel's Failure to Secure Montez Mullins as a Defense Witness

Attorney Claiborne Ferguson filed a Transfer Order a Tennessee Prisoner Montez Mullins to be brought to Shelby County Criminal Court to be a witness for the defense on February 21, 2017, the set date for trial to begin (See attached Transfer Order, this was not made part of the record). Mr. Mullins was willing to testify as being the responsibility party for having

the package containing methamphetamine sent to Ms. Cole's residence. That Mr. White had nothing to do with it or no knowledge of what was going on, the text messages that were sent from Ms. Cle's cell phone were sent to him, and that he was in possession of the 615-917-3749 number. The state became aware of Mr. Mullins and ask for a continuance due to the fact the state wasn't ready for trial because lab test for the drugs wasn't back. There was no objection by Mr. Ferguson nor did Mr. Ferguson take any steps to secure Mr. Mullins as a defense witness. The State sent Detective Robert Christian to take Mr. Mullins statement, so the state could re-indict case # 16-02794 to indictment 17-01568 to add Montez Mullins as a co-defendant. Mr. Ferguson fail to advocate for Mr. White's defense that could have under minded the Prosecutor's case but instead he allowed the State to use Mr. Mullins out of court statement during trial through Detective Christian's testimony to convince the jury that Mr. Mullins was not being truthful about Mr. White having nothing to do with the shipping of the drugs because of the "ly" words and "swearing" words during his confession. Montez Mullins was the heart of the defense strategy that would have given reasonable doubt to the jury. Mr. Ferguson action fail below the competent of his responsibility to secure an important witness. Mr. Ferguson's actions were clearly harmful towards Mr. White to allow the state to use Mr. Mullins statement to add Mr. Mullins as a co-defendant only to prejudice the jury against the truthfulness of the only witness that could testify for Mr. White and under mind the State's case. It is clear by the record that the Prosecutor's only reason in using Mr. Mullins statement was to further prove Mr. White had knowledge of the drugs by stating in closing arguments "Take Mr. Mullins at his word, I had that sent. That part I can believe, but when he says nobody else knew about it, ladies and gentlemen that's a bald face lie". (App. Vol 6 Pg. 43). Mr. Ferguson's failure to properly advocate by abandoning his client's best trial strategy further denied Mr. White proper representation and the assistance of counsel The State Constitution Article 1 Section 9 as well as the United States Constitution 6th Amendment clearly states "that all accused shall enjoy the right to proper representation, the right to put on evidence, and to call witnesses on their behalf". Here mr. White was denied those opportunities due to Mr. Ferguson's action in not securing Mr. Mullins as a defense witness.

G.) In Counsel's Failure to Subpoena Witnesses for the Defense

In Mr. Ferguson's failure to subpoena Dustin White and Jazzavor McEntyre to testify at Mr. White's request to have these witnesses brought before the court. Jazzavor McEntyre drew up a sworn Affidavit because Mr. Ferguson refused to take her statement after Mr. White informed Mr. Ferguson she wanted to testify. This Affidavit was given to Mr. Ferguson by Mr. White. Dustin White and Jazzavor McEntyre both could have testified to the rebuttal of Detective Mark Gaia testimony on the fact that Dustin White's cell phone was blowing up with the same 615-917-3749 number displaying "J" that Detective Gaia testified was blowing up Ms. Cole's cell phone. Testimony used to prove Mr. White was on the receiving end of the text messages. The action taken by Mr. Ferguson denied Mr. White his rights to call witnesses on his behalf. The Affidavit from Jazzavor McEntyre was notarized on July 3, 2017 (see attached Affidavit by Ms. McEntyre) and (See attached Letter) that was written personally by Mr. White stating that Ms. McEntyre wanted to testify. The testimony from these witnesses could have given adversarial challenge to the State's key witness testimony, when there was no physical evidence to support Detective Gaia testimony about Mr. White's brother and fiancé Jazzavor McEntyre showing up at the residence with the same 615-917-3749 number display "J" that was blowing up Ms. Cole's cell phone in order for the state to prove Mr. White was on the receiving end of the 615-917-3749 number and him being responsible for having the package of methamphetamine delivered to Ms. Cole's residence. Detective Gaia's testimony was the only witness the state could call in order to prove that Mr. White had knowledge or could be responsible. Mr. Ferguson actions fail below the competent to shine on the very facts that Dustin White's cell phone did not have the same 615-917-3749 number as Ms. Cole's cell phone. Due to the facts that during trial Detective Gaia was forced to admit he sent the last text message "what do you want me to do with it" to the 615-917-3749 number to see who would show up. If Detective Gaia was truthful in sending the third text message, he would have arrested Dustin White and Jazzavrr McEntyre for having the same 615-917-3749 number and seized the phone. The testimony from Dustin White and Jazzavor McEntyre would have provided important details that would have proven that Detective Gaia testimony was not based on the true events of

February 3, 2016. In Mr. Ferguson's failure to properly advocate for Mr. White in preparing a defense with witnesses to challenge the State's theory that Mr. White was on the receiving end of the 615-917-3749 text messages and that Detective Gaia was not being truthful in his testimony.

H.) In Counsel's Failure to Object under TN R. Evid 404(b) to a Prison Internal Affairs Officer Andrew Brown

In Mr. Ferguson's allowing the State to present character evidence and/ or other bad acts during the testimony of a prison investigator Andrew Brown towards Mr. White, by only objection was to the relevance (App. Vol. 8 Pg. 254) and it was outside the scope of the trial (Vol. 8 pg. 257??). The testimony given by Andrew Brown was highly prejudice and Mr. Ferguson should have requested an out of court hearing under the TN R Evid, 404(b) before allowing this testimony to be heard by the jury. The State's reason for the testimony from Andrew Brown was to further prove that Mr. White was in possession of a cell phone on February 3, 2016. In further questioning Mr. Brown on his opinion of what signatures in Ms. Cole's cell phone "Da Junk Yard", "Country Crazy", "L.L.K.N./JYD" would mean to him. In Mr. Ferguson failure to appropriately lodge an objection under TN. R. Evid. 404(b). That would have established that a prison investigator had no personal knowledge of what these signatures were or how these signatures had to do with the "Almighty Vice Lord Nation"; How these could identify Mr. White other than proving a character trait. The out of court hearing would have Pay-pal, Green Dot, or Kroger cards in prison. The state had proof or evidence to show that Mr. White had any knowledge of drugs. The state chose to put on character evidence to further prove knowledge. Mr. Ferguson's actions fail below the standard in failing to properly advocate during the testimony of Andrew Brown, where any competent attorney would have never allow such prejudice testimony to be given. This further denied Mr. White the right to properly raise this issue with the higher courts on his direct appeal (See State v Jason White W2018-00329-CCA-R3-CD).

I.) In Counsel's failure to Request for Suppression of Evidence was Objectively Unreasonable

The State's key evidence against Mr. White was SMS messages found on Co-defendant Ms. Cole's cell phone. These SMS text messages were illegally obtained and Mr. Ferguson

failure to object to the admission of the SMS Text messages at trial was unreasonable. Pursuant to T.C.A. 40-6-110(b), a law enforcement officer must obtain a search warrant before extracting or examining any cell phone records “No cellular telephone data that is obtained in violation of this section may be used in any court”. T.C.A, 40-6-110(b). The law enforcement officer even took a further step to plant evidence in Ms. Cole’s cell phone that was used as evidence against Mr. White. Had Mr. Ferguson moved to have this evidence suppressed during trial after lead Detective Mark Gaia was forced to admit that he had searched Ms. Cole’s cell phone, but further sent text messages from Ms. Cole’s cell phone, there would have been no evidence against Mr. White. The evidence taken from Ms. Cole’s cell phone was the heart of State’s case in order to identify Mr. White through picture’s taken from the cell phone as well as other evidence in order to prove an alleged conspiracy. If Mr. Ferguson actions not fail below the competent in order to properly advocate during a critical stage of the trial, there would have been a different outcome.. The actions taken by Mr. Ferguson would show that Mr. White was denied effective assistance of counsel at a critical stage. The fact Detective Gaia got a search warrant On February 4, 016 would not have preserved the evidence. This evidence was prejudice against Mr. White due to the facts this was the only evidence for the state to prove Mr. White had any knowledge of the package containing methamphetamine. If Mr. Ferguson would have properly advocated in taking the proper actions to have this evidence stricken from the record, this would have destroyed the state’s case due to the facts the case was surrounded completely on text messages from Ms. Cole’s cell phones.

J.) In Counsel Failure to Challenge the Ex Parte communication between the Residing Trial Judge and ADA

On May 16, 2016 two weeks prior to Mr. White being presented before the court to be arraigned. Assistant District Attorney Scruggs pre-took in an inappropriate Ex Parte Communication with the residing trial judge Robert B Carter, Jr. who engaged with ADA Scruggs about the facts of the evidence that was a part of the record and evidence that was not a part of the record. The ex parte communication detailed Mr. White’s previous criminal records along with Mr. White’s gang affiliation within the prison system. It is clear by the record that Judge Carter and ADA Scruggs were interest in who was the responsible party for sending the

package containing methamphetamine. Counsel's failure to take prompt action prior to trial by filing Motions to Recuse ADA Scruggs and Judge Carter from any further pursuit in tag team in an inappropriate investigation against Mr. White (See attached Transcripts from May 16, 2016). In Mr. Ferguson's failure to properly investigate into pretrial transcripts, this would have denied Mr. White his rights to the preparation as part of defense. This action taken by the court and the State denied Mr. White the assistance of counsel by failing to disclose this information pursuant to Rule 2.9 of the TN R. of Code of Judicial Conduct. This was a pursuit of unjust as well as a discriminatory action against the criminal judicial system as well as Mr. White's constitutional rights. The ex parte communication was highly prejudice towards Mr. White's character and credibility. And in any opportunity set out in Mr. White's pursuit to prove his innocence or to challenge the state's case against him. During his criminal proceeding Mr. White was denied the assist of counsel during Arraignment in denying his right to be a part of co-defendant Cole's suppression hearing, denied the right to properly address a conflict of interest with his trial counsel, and even during trial Mr. White was denied his right to assistance of counsel after the trial judge was made aware of the communication break down with Mr. Ferguson due to the conflict of interest. Clearly by the record the Ex Parte Communication positioned the trial judge's ability to remain neutral and un-bias which denied Mr. White of his due process. An Ex parte Communication has long been stated as being a gross breach of appearance and should not be allowed United States v. Minsky, 963 F. 2d 9 (6th Circuit 1992). "The court held that an ex parte sidebar conference violated the defendant's right to a fair trial and was a sixth amendment violation where the judge held a sidebar conference with only the Prosecutor". In Mr. Ferguson's failure to properly address this prior to trial was ineffective assistance of counsel set out in Strickland v. Washington, 466 U.S, 668, 80 L.Ed 2d 674 (1984) in the attorney's preparation and his failure to properly investigate.

K.) In Counsel's Failure to Object to Inadmissible Testimony at Trial

Attorney Claiborne Ferguson failure to object to the admission of testimony given by Detective Mark Gaia and Detective Robert Christian that was objectively unreasonable. The testimony of Detective Gaia and Detective Christian was inadmissible and highly prejudice

evidence against Mr. White. During trial Detective Gaia was allowed to testify to hearsay statements given by Co-defendant Ms. Cole during her arrest in identifying the person in the picture found by Detective Christian to be a Timothy Smith. This testimony was later used by the State to further show that during Ms. Cole jail calls to identify Mr. White as being on the receiving end of the jail calls. If Ms. Cole made any such statement during her arrest, was inadmissible hearsay under Tn. R. Evid. 801 and Tn. R. Evid. 802. In Mr. Ferguson's failure to object to Detective Gaia inadmissible hearsay testimony to what Ms. Cole said at the time of her arrest and his testimony should have been excluded. The State continued to allow Detective Gaia's testimony in his opinion during the introduction of the State's evidence of Ms. Cole's cell phone SMS text messages in what he believed to be that of Ms. Cole and Mr. White (App. Vol. 7 Pg. 107, 112-115, 117-119, 121-125). In the identification of SMS text messages as "Boo", "Boo Bear" "Boo other line" the testimony of Detective Gaia was inadmissible under Tn. R. Evid. 602 and Tn. R. Evid. 901 that Detective Gaia had no personal knowledge of the authentication or in identifying who Ms. Cole was texting from her cell phone. In Mr. Ferguson's failure to object to Detective Gaia inadmissible testimony in the identification of Mr. White that should have been excluded. Also, Detective Robert Christian was allowed to testify in the form of an opinion during the introduction of Mr. Mullins out of court statement that stated Mr. White had no knowledge of the package. Detective Christian stated that he did not believe Mr. Mullins due to his use of "ly" words and "swearing" words in his opinion the use of these type words was a sign of deception in determining Mullins truthfulness. Detective Christian's testimony to determine the truthfulness of Mr. Mullins' out of court statement was inadmissible under Tn. R. Evid. 703 even though Detective Christian's previous skills or experience in interrogating suspects. The court should have disallowed testimony in the form of an opinion or influence if the underlying facts or data indicate lack of truthfulness. Mr. Ferguson should have objected to Detective Christian inadmissible testimony that should have been excluded. This testimony was highly prejudicial due to the very facts that the State had no evidence that would show Mr. White had any knowledge of methamphetamine. The State's only reason of introducing Detective Christian's testimony was to discredit Mr. Mullins statement. This was further established during

closing arguments when the Assistant District Attorney stated “take Mr. Mullins at word. I had that sent but when he said “nobody else knew” that was a bald face lie”.

L.) Counsel was ineffective for colluding with the State Prosecutor and the Bartlett Police Department Detective Mark Gaia to obtain an illegal conviction.

The lawyer allowed the State Prosecutor to use illegal obtained evidence as well as false evidence through the proceeding in violation of the Rule D Board of Professional Conduct. Rule D, Board of Professional Conduct clearly states no lawyer or prosecutor should knowingly use evidence obtained illegally or perjured testimony of false evidence. In the State Prosecutor’s knowledge that evidence is false or illegal, it should be corrected. That prior to trial Mr. Mullins was brought forward by Mr. Ferguson, to be witness for the defense in taking full responsibility of the crime. Mr. Ferguson abandoned his trial strategy by allowing the State to make Mr. Mullins a Co-defendant so the State could use a statement given by Mr. Mullins in order to stop Mr. Mullins from testifying. The lawyer actions abandoned the only trial strategy that would have undermined the State’s case. In Mr. Ferguson’s failure to take actions during the trial or made any objections to the State introducing the Out of Court statement that Mr. Mullins wasn’t being truthful. If the Prosecution felt the Out of Court statement wasn’t truthful, the Prosecutor should have refrained from introducing this evidence. At trial during lead Detective Mark Gaia testimony it was proven that Detective Mark Gaia planted evidence in Ms. Cole’s cell phone and no actions were taken by the Prosecutor or attorney to correct the false evidence. The Prosecutor was allowed to further state on the record that he had no knowledge of the planted evidence by Detective Mark Gaia. Mr. Ferguson’s actions clearly show that he colluded with the State by abandoning the only defense strategy that would have undermined the State’s case. The lawyer, the Prosecutor and the Detective Mark Gaia clearly were aware that the address on the package containing methamphetamine did not match Ms. Cole’s address. The evidence was created by the hands of Detective Mark Gaia of the Bartlett Police Department. The State or Mr. Ferguson did nothing to protect Mr. White’s Constitutional rights. This action further shows Mr. Ferguson colluded with the Prosecutor and Detective Mark Gaia to get an illegal conviction with planted evidence and perjured testimony from Detective Mark Gaia. Mr. Ferguson’s failure to properly prepare a defense in investigating, interviewing witnesses, following through with the

pretrial motions filed, calling witnesses and protecting Mr. White's rights to a fair trial. Mr. White states that due to the conflict of interest and breakdown of communication between attorney/ client Mr. Ferguson should have withdrawn as counsel. In Mr. Ferguson's failure to properly advocate in challenging the state allegations, witnesses, and evidence presented during trial. Mr. Ferguson deprived Mr. White of effective assistance in failing to provide competent representation needed to ensure Mr. White received a fair trial or a just outcome.

M.) In Counsel's Failure to Challenge Detective Mark Gaia Testimony on Planted Evidence

At trial the State relied on Detective Mark Gaia's Testimony into his investigation and the surrounding evidence that was being introduced during trial. On direct examination the State introduced cell phones that has taken from Co-defendant Cole residence. Detective Mark Gaia further testified while during the search of Ms. Cole LG cell phone was blowing up with the 615-917-3749 number. Detective Gaia stated he answered the phone and placed the cell phone to Ms. Cole's ear. He further stated Ms .Cole told the person on the phone she wanted a lawyer, call ended. Detective Gaia further testified that Mr. White's brother Dustin White showed up at the residence with the same 615-917-3749 number displayed as "J" that was calling Ms. Cole's cell phone. The testimony of Detective Gaia was used as to identify that Mr. White was on the receiving end of the 615-917-3749 number due to Detective Gaia testimony that Ms. Cole had sent text messages to the 615-917-3749 number after the package containing methamphetamine was taken into the residence by Ms. Cole. During trial ADA Scruggs asked Detective Gaia to read the last three text messages sent from Ms. Cole to the 615-917-3749 number that read (1.) "package arrived", (2.) Lucky they knew the right street because the street address was wrong", (3.) "what do you want me to do with it". This evidence and testimony was the State's key evidence against Mr. White in trying to connect him with the package containing methamphetamine.

On cross examination by Ms. Cole's attorney Ms. Simmons, Detective Gaia was forced to admit he had sent the third text message to the 615-917-3749 number stating "what do you want me to do with it". Detective Gaia's reason for this sending the test message was to see who would show up in order to find out who was responsible for the package containing

methamphetamine. Detective Gaia was questioned on why he wasn't forth coming about sending the third text message when the State asked him. Detective Gaia responding in saying he wasn't asked who sent it, but was ask to read the text messages. On re-direct by ADA Scruggs about the text messages, Detective Gaia stated he had forgotten he had sent the text message in reason to show the State was unaware of the planted evidence by Detective Gaia.

On cross examination by Mr. Ferguson, he was was briefed in only asking Detective Gaia if there was anything else he needed to clarify to the jury about this evidence, Detective Gaia said "No Sir, not to my knowledge". Mr. Ferguson furthered questioned Detective Gaia about the amount of the drugs and how much was the street value.

In Mr. Ferguson's failure to challenge Detective Gaia's testimony about the planted evidence. Mr. Ferguson could have pointed out that Detective Gaia wasn't being honest in just sending the third text message to see who would show up. If Mr. Ferguson had cross examined Detective Gaia on why he didn't arrest Mr. White's brother Dustin White when he showed up at the residence with the same 615-917-3749 number on his phone. Why didn't Detective Gaia seize Dustin White's cell phone as evidence or take a statement from Dustin White. Mr. Ferguson's failure to point out that if Detective Gaia had honestly forgotten about sending the third text message why did he wait until following day February 4, 2016 to obtain a search warrant for the 615-917-3749 cell phone (see attached search warrant for the cell phones, this was not made a part of the record). Mr. Ferguson's failure to point out when he asked Detective Gaia if there was anything else that needed to be clarified to the jury about the evidence, how was it possible that according to Ms. Cole's booking sheet that clearly shows she was arrested or booked into the jail at 15:30 hr. (See attached booking sheet) that the first text message sent from the 615-917-3749 number was sent at 15:38 hr., second text at 15:39 hr. (See attached text messages) these text messages were introduced by the State as evidence against Mr. White (see App. 3 Exh. 31 Pg. 33). Mr. Ferguson's failure to take the appropriate action in challenging the State's key witness and evidence by raising adversarial testing of the State's Case by pointing out Detective Gaia had planted the evidence against Mr. White, and he further lied about other evidence presented that included his testimony that Mr. White's brother showed up with the

same 615-917-3749 number in his cell phone. Mr. Ferguson's actions denied Mr. White the opportunity to challenge the State's only witness during trial to testify on the evidence against Mr. White. Mr. Ferguson's actions was objectively unreasonable and denied Mr. White effective assistance of counsel during a critical stage of trial.

Conclusion

Mr. White was denied objectively reasonable assistance from his trial counsel, Mr. Ferguson. Counsel's numerous errors, along with the cumulative impact of these errors caused violation his rights to effective assistance of counsel and violated Mr. White's Due Process. Mr. White's conviction is void and he is entitled to relief under the Post- Conviction Procedure Act. Wherefore premises considered Mr. White respectfully request that this court vacate his conviction in this matter.

Respectfully submitted this 22 day of March, 2021



Jason White # 86663 (Pro-se)

PNM

P.O. Box 1059

Santa Fe. NM 87502-1059

Jason L White, Pro-se

Jason L White #86663

PNM

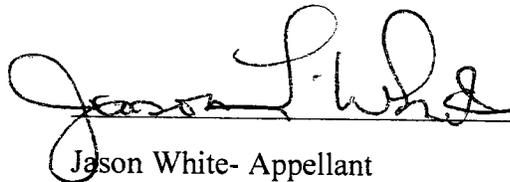
P.O. Box 1059

Santa Fe, NM 87504

CERTIFICATE OF SERVICE

I, Jason L White, Petitioner do hereby certify that I have mailed a true and correct copy of the above and foregoing Notice to the Court to the State Attorney General for the Western District of Appeal for the State of Tennessee.

This 25th day of March, 2021.

A handwritten signature in black ink, appearing to read "Jason L. White", written over a horizontal line.

Jason White- Appellant

Pro-Se

Appendix:

The Documents attached are for this Amended Post Conviction Petition and for the issues 1A-1M , the issues may make reference to documents listed in several issues. This Appendix makes reference to the documents as they are attached and not necessarily by the issue.

Indictments #16-02794 and #17-01568

See attached Arraignment Transcripts

Capias, Booking Sheet, Presentence Report, Judgment Sheet

Contract for Claiborne Ferguson

Pretrial Motions

Incident Report from Shelby County Deputy Darius Jones # 9578

Affidavit from Jazzavor McEntyre

Phone Bill for 901-208-9195

Transfer Order on Montez Mullins

Letter from Jason White to Mr. Ferguson on Defense Witness

Ex Parte Communication Transcripts

Search Warrant for Ms. Cole's Cell Phone

Booking Sheet on Ms. Cole

Text Messages from Ms. Cole after arrival of the Package

APPENDIX E: SUBPOENA

DIVISION III

No. 21702460/1701568

**CRIMINAL COURT
OF SHELBY COUNTY**

State of Tennessee

VS. DEFENDANT SUBPOENA

Jason L White, At-se

Issued 13 day of October 20 21
O. Webb

Deputy Clerk

Came to hand 14 day of Oct 20 21
Executed VIA certified mail
Handed to Shelby County
Criminal Court Clerk, to
Be signed + processed. Served
via certified mail

STATE OF TENNESSEE

TO THE SHERIFF OF SHELBY COUNTY-GREETING:

You are hereby Commanded to Summon

Judge Robert Carter Jr.
Div III Shelby County Criminal Court
Memphis, Tennessee 38103

if to be found in your County, personally to be and appear before the Judge of the Criminal Court, Division III of Shelby County, at a term of said Court now holding for the County of Shelby, at the Criminal Justice Center, 201 Poplar, in Memphis, on the 6 day of October 20 21 then and there to testify, and the truth to say, in behalf of the Defendant, on 1701568 bill of indictment against JASON L. White, Pro-se

for hearing on Post Conviction hearing relief as a material witness.

pending in our said Court

This you shall in no wise omit, under penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness: Heidi Kuhn, Clerk of said Court.

At office, the third Monday in September term 2021

Heidi Kuhn, Clerk

By

J. Webb

Dep. Clerk

CC16-8

Destination and Origin		
Destination		
ZIP Code	City	State
381031945	MEMPHIS	TN
Origin		
ZIP Code	City	State
381049998	MEMPHIS	TN

Tracking Number Classification	
Class/Service	
Class/Service:	First-Class Certified Mail
Class of Mail Code/Description:	FC / First Class
Destination Address Information	
Address:	201 POPLAR AVE
City:	MEMPHIS
State:	TN
5-Digit ZIP Code:	38103
4-Digit ZIP Code add on:	1945
Delivery Point Code:	01
Record Type Code:	Street Record
Delivery Type:	Business, Other
Origin / Return / Pickup Address Information	
Address:	
City:	
State:	
5-Digit ZIP Code:	38104
4-Digit ZIP Code add on:	9998
Service Delivery Information	
Service Performance Date:	Expected Delivery by: Friday, 10/15/2021
Delivery Option Indicator:	1 - Normal Delivery
Zone:	01
PO Box:	N
Other Information	<u>Service Calculation Information</u>
Payment	
Payment Type:	Other Postage
Payment Account Number:	000000000000
Postage:	\$0.58
Weight:	0 lb(s) 1.00 oz(s)
Rate Indicator:	Single Piece - Letters
Other Information	
Related Product:	<u>9590 9402 6719 1060 2721 62</u>

USPS Tracking Intranet

Delivery Signature and Address

Tracking Number: 7020 3160 0002 0449 1807

This item was delivered on 10/14/2021 at 11:22:00

[< Return to Tracking Number View](#)

Signature	 
Address	<p style="font-size: 2em; text-align: center;">584 Aylmer St</p>

10/20/21, 10:20 AM

Extra Services					
Extra Services Details					
Description			Amount		
Certified Mail			\$3.75		
Events					
Event	Event Code	Event Date	Event Time	Location	Input Method
TRACKING INQUIRY, CALL CENTER	VT	10/19/2021	16:15		Customer Driven Activity
DELIVERED, FRONT DESK/RECEPTION/MAIL ROOM	01	10/14/2021	11:22	MEMPHIS, TN 38103	Scanned
ENROUTE/PROCESSED	10	10/14/2021	00:01	MEMPHIS, TN 38101	Scanned
ENROUTE/PROCESSED	10	10/13/2021	20:13	MEMPHIS, TN 38101	Scanned
ENROUTE/PROCESSED	10	10/13/2021	18:56	MEMPHIS, TN 38101	Scanned
DEPART POST OFFICE	SF	10/13/2021	17:34	MEMPHIS, TN 38104	System Generated
ACCEPT OR PICKUP	03	10/13/2021	14:48	MEMPHIS, TN 38104	Scanned

55

APPENDIX F: THE POST AND EMAIL ARTICLES

- 1.) Tennessee Sentences Man to Life in Prison in Bait-and Scheme (August 4, 2021)
<https://www.thepostemail.com/2021/08/04/tennessee-sentences-man-to-life-in-prison-in-bait-and-switch-scheme/>
- 2.) Shelby County, TN. Drug Conviction Hearing Rescheduled, but Will it Happen?
<https://www.thepostemail.com/2021/10/05/shelby-county-tn-drug-conviction-hearing-rescheduled-but-will-it-happen/>

section of Memphis. The package was reboxed, given a new shipping label bearing the address of the Bartlett Police Department, and shipped overnight to the Bartlett PD.

On February 3, officers from the Bartlett PD brought it to Cole's home, whose address did not match the one affixed to the original box, and placed it on her porch.

Shortly thereafter, Cole retrieved the package and brought it into the house as police observed from a distance, after which they executed a search warrant on her home and computer, the latter without a warrant.

Cole was then arrested, taken into custody and her phone confiscated, as would be expected.

On April 21, 2016, Cole and White, who was serving his last months of a 21-year sentence at Riverbend Maximum Security Institution in Nashville, were indicted by the Shelby County grand jury for participating in a "conspiracy" involving the promotion, sale or "manufacturing" of methamphetamine in a "drug free zone."

A third defendant, Tennessee inmate Montez Mullins, was also indicted.

Ja-2016-Indictment575Download

The indictment lists then-Bartlett Police Detective Mark Gaia as the "prosecutor" and notes "Pat Vincent" as foreperson of the Shelby County grand jury.

Since 2009, The Post & Email has reported on Tennessee's system in which criminal court judges are permitted, contrary to state law, to select the grand jury foreperson from the community at large without a vetting process, then allow him or her to serve in that capacity for years and sometimes decades.

Vincent was a long-running grand-jury foreperson who appeared to share the role in Shelby County with one Mary Thomas, who in 2018 District Attorney General Amy Weirich announced had failed to "follow proper procedure." Consequently, Weirich dismissed Thomas from her leadership of the "Tuesday" grand jury. An article in *The Commercial Appeal* appears to support the fact that Vincent, although misidentified as "Jay," was a grand-jury foreperson at the same time as Thomas.

The Shelby County grand jury reportedly now has different forepersons.

A recorded and written confession from Mullins for allegedly planning the "conspiracy" contended that neither Cole nor White was involved, but both were tried, convicted, and sentenced to lengthy prison terms.

As Kimberly White told us in an October 2017 interview, during the trial Bartlett Police Det. Mark Gaia testified that Cole had been communicating with White in prison about the package through text messages but on the stand admitted he himself sent the third of three texts from

Cole's phone while she was in police custody. Gaia was also noted as "prosecutor" on Jason White's indictment.

Discovery documents can be found here: <https://www.thepostemail.com/wp-content/uploads/2017/10/Jason-and-Kristina-Case-Info188.pdf>

On Thursday, White's mother Kimberly was interviewed about the case by David Tulis of NoogaRadio in Chattanooga: https://www.facebook.com/watch/live/?v=352826222977912&ref=watch_permalink

As to how Jason came to be involved, Kimberly White told Tulis, "They found a picture of my son at the residence, and they started targeting him at that point." Police initially attempted to incriminate her younger son, Dustin, and his fiancée, who were acquainted with Cole, Kimberly added, although neither was ultimately charged. "Det. Gaia admitted on the stand during cross-examination of Kristine [sic] Cole's attorney — he admitted to sending the third text message of 'What do you want me to do with it?' in an attempt to see who would show up, but it's very clear, looking at Kristina Cole's booking sheet, she was booked in at 15:30 hour on February the third; the first text message went out at 15:38 stating, 'The package has arrived'; the second one went out at 15:39 saying, 'Lucky it made it here; it has the wrong street address'; and the third one was about 45 minutes later that said, 'What do you want me to do with it?'" Kimberly said. "Kristina Cole was booked in with her fingerprints on the booking sheet at 15:30 hour. According to the text-message printout by her cellphone, the first text message went out at 15:38, so there was no way that she could have sent the first text message, any of the text messages, because she was in custody. And with Det. Gaia admitting to sending the third text message on the stand, it's obvious that he sent all three text messages. This evidence was used against my son to say that he had received text messages from Kristina in reference to the package."

"On a phone that went down the toilet, supposedly," Tulis responded, to which Kimberly replied, "Yes, sir, and they did not bother to pull any phone records on that number."

All three defendants in the case were convicted, with Mullins receiving a 30-year sentence; Cole received a 13.5-year sentence with no previous criminal record; and White was given a 60-year sentence with no possibility of parole.

At the hearing on the 27th, White plans to raise the fact that the two "Class E" felony charges formally filed against him in June 2016, as noted in the records of the Shelby County Justice System, were dismissed, and his July 14, 2017 conviction determined on altered charges carrying higher penalties.

The law White was initially charged with violating, TCA 39-17-433, "Promotion of methamphetamine manufacture," constitutes a "Class D Felony," according to Lexis Law Publishing.

Index of Contents

Tenn. Code Ann. § 39-17-433

Copy Citation

The Tennessee Code Annotated Title 39 Criminal Offenses Chapter 17 Offenses Against Public Health, Safety and Welfare Part 4 Drugs

39-17-433 Promotion of methamphetamine manufacture

- (a) It is an offense for a person to promote methamphetamine manufacture. A person promotes methamphetamine manufacture if:
 - (1) the chemical drug ingredient or apparatus to produce methamphetamine is purchased in violation of subsection (b)(1), or more than one (1) quantity, for purposes of production under the section in violation of subsection (b)(2), or when used for any purpose;
 - (2) immediate methamphetamine precursors are purchased in violation of subsection (b)(3), or more than one (1) quantity, for purposes of production under the section in violation of subsection (b)(4), or when used for any purpose.
- (f) A violator of this section is a Class D felon.

History

Acts 1999, ch. 446, § 1, 2001, ch. 306, § 11, 2003, ch. 290, § 4, 2011, ch. 324, § 1

UNOFFICIAL CODE COMPILED BY THE OFFICE OF THE CLERK OF THE SUPREME COURT OF TENNESSEE
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Shelby County Criminal Justice System Portal

Charge

WHITE, JASON

1	UNLAWFUL PROMOTE MANUF METHAM	39-17-433	felony 1	06/02/2016
2	UNLAWFUL PROMOTE MANUF METHAM	39-17-433	felony 1	06/02/2016

Disposition Events

06/25/2017 Disposition

Carier Robert

- 1 CONSP-PROMOTE MANUF METHAMPHETAMIN Nolle Prosequ no Court Costs
- 2 CONSP-PROMOTE MANUF METHAMPHETAMIN Nolle Prosequ no Court Costs

All screenshots from SCCJS taken on July 30, 2021

White's "Judgment Sheet" issued after trial incorrectly displays his birth year as 1987 when it should be 1981 and indicates a conviction on a "Class A" felony. White pointed out the discrepancy in a petition filed October 4, 2017 prior to his sentencing.

Ja-Judgement-Sheet-Ct-1-and-2-20175851Download

The Defendant, states there is a discrepancy in the actual True Bill he was indicted on. The Defendant states that on June 2, 2016 a Capias (see attached) was issued on him for Indictment # 16 02794 signed by Richard L. Desaussure III, Clerk of Court and a judge, who signature is not legible stating the True Bill of Indictment to be T.C.A 39-17-433 Consp -Promote Manuf. Methamphetamine, a Class E Felony issued on April 22, 2016. The Defendant, was brought before the Magistrate on June 2, 2016 to be arraigned on a True Bill of Indictment of T C A 39-12-103- CONSPIRACY- UPCS WITH INTENT, METH ** DRUG FREE ZONE**, T.C.A. 39-12-103 UPCS WITH INTENT, METH ** DRUG FREE ZONE**, T.C.A. 39-17-

434 UPCS WITH INTENT TO SELL ** DRUG FREE ZONE**: T.C.A. 39-17-434
UPCS WITH INTENT TO DELIVER ** DRUG FREE ZONE**, Class B Felony,
signed by the Foreperson of the Grand Jury, Pat Vincent and Amy Weirich, District
Attorney General 30th Judicial District. The Defendant, pro-se request an investigation
and review into the True Bill of Indictment on him. The Defendant has the right to
know the reason for his Indictment according to Fed. R. Crim. P. 7, which states that
an indictment or information must be plain, concise, and definite written statement of
the essential FACTS constituting the offense charged and cannot be amended if the
charge is of a different offense and or the Defendant is prejudiced. That Pat Vincent,
[petition-revised-32Download](#)

White additionally alleges bias and improper communications between Shelby County
prosecutor Chris Scruggs and Carter as evidenced by a transcript from May 16, 2016.

While titled, "TRANSFER ORDER," the transcript reflects an unscheduled discussion between
the two at which White was not present. The first page of the transcript contains an illegible year
and numerous other errors; the year is stated correctly on page 5.

Beginning by referring to White as "James," Scruggs identified White as an inmate at Riverbend
Maximum Security Prison, calling him a "fugitive" who needed to be transferred to the Shelby
County jail for arraignment on the drug-shipment charge.

When Carter responded that he would sign the transfer order, Scruggs said, "Okay. I think the
Court will enjoy the facts on this case. I've never seen anything quite like it."

24 THE COURT: I will sign the order and
25 hopefully he'll be here for his arraignment day.

1 MR. SCRUGGS: Okay. I think the Court
2 will enjoy the facts on this case. I've never seen
3 anything quite like it.
4 THE COURT: Conspiracy and in a drug free
5 school zone.

Ja-Transfer-Order5521Download

Scruggs described the package left on Cole's porch as "unaccepted" by Cole.

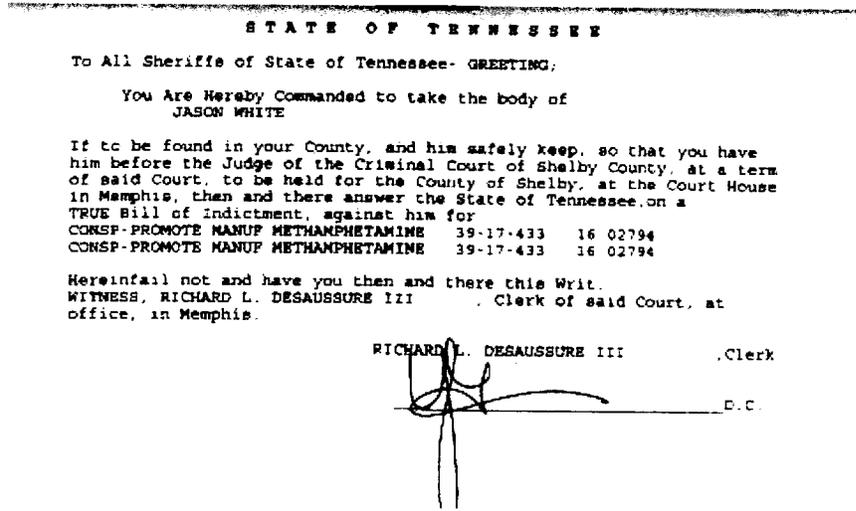
When Carter asked who the shipper of the package was, Scruggs responded, "I think it'd be fun to find –" according to the transcript. Carter was noted to have responded, "...I guess they could always do the classic surprise – you know –"

Scruggs gave his version of White's criminal history, after which the judge is noted to have replied, "Got a quite a resume..." [sic]

Shelby County, TN Drug Conviction Hearing Rescheduled, but Will it Happen?

Tuesday, October 5, 2021

by Sharon Rondeau



(Oct. 5, 2021) — Subpoenas were served to the district attorney’s office, a former local police detective and a number of other material witnesses to appear at an August 27 hearing for Jason Lamar White, a Tennessee convict transferred out-of-state two years ago representing himself in an ongoing appellate process for a 2017 conviction of which he claims he is innocent.

Just before the hearing was to take place, it was rescheduled to November 4.

According to White’s current “elbow counsel,” Shae Atkinson, in August subpoenas were served to 30th Judicial District District Attorney General Amy Weirich and Assistant District Attorney Christopher Scruggs; former Bartlett Police Department Detective Mark Gaia, who was reported by Atkinson at the time to be “evading service”; White’s former counsel, Claiborne Ferguson, who claimed White assaulted him in a courtroom, an allegation disputed by a deputy sheriff present in the room; and Robert Felkner, a public defender who once represented White.

White is asserting that his constitutional rights were violated by the trial judge, Robert “Bobby” Carter, and Scruggs, who pursued the case against him and two other defendants.

In 2016, White was serving the final months of a 21-year sentence for a burglary conviction. In April that year, White was charged with having arranged for a package containing methamphetamine to be delivered from Visalia, CA to his girlfriend, Kristina Cole, who lived in the Bartlett district of Memphis in Shelby County.

Cole, White and a third defendant, Tennessee inmate Montez Mullins, were charged with conspiracy to distribute methamphetamine in a “drug-free zone” where a school was located. In White’s case, as The Post & Email has reported, the charges were altered after the fact.

A single mother of three, Cole had no previous criminal history and claimed to her then-attorney, Michael E. Scholl, prior to trial that she did not know the contents of the package in advance.

The case, #C1702460, went to trial in July 2017, at which time White and Cole entered pleas of “Not Guilty.” Both were convicted, as was Mullins, despite his having submitted written and oral confessions to committing the crime alone.

The cell phone White allegedly used to communicate with Cole to arrange the delivery was flushed down a prison toilet, Kimberly White, Jason’s mother, said, but an examination of the call records was never conducted, a reported she reiterated to radio host David Tulis in a July 2021 interview.

At sentencing in October 2017, White received a 60-year prison term, the longest possible by statutory guidelines, for a crime no one proved he committed and which was based on a statute harsher than the two “Class E” felonies originally invoked.

The two initial charges were not prosecuted, the case record showed in July. However, the record appears to have been altered, with the “Nolle Prosequi” entries no longer present both in August and at the time of this writing. Instead, the record indicates White was charged with two Class “A” felonies involving a “school zone.”

In May 2019, White was pursuing an appeal when he was transferred to New Mexico at Weirich’s recommendation. After arriving, White was provided no access to Tennessee law, his mother Kimberly told The Post & Email. Nevertheless, he filed a post-conviction petition in April 2020 and continued to pursue other legal remedies with the State of Tennessee of which the November 4 hearing is a part.

Jason-White-Post-Conviction535Download

In May 2020, White requested transport to Tennessee stemming from his self-representation which was denied by a three-judge appellate panel ostensibly because of the “COVID-19 pandemic.”

On June 28, 2021, White filed an “application for extraordinary appeal” in accordance with Tennessee Rules of Appellate Procedure (TRAP) Rule 10 which the court denied. On July 14, White appealed the decision based on TRAP 39. In a response to the Rule 10 petition, a three-judge panel wrote that because White did not submit an “adequate record” for its review, it denied the application. The panel acknowledged, however, White’s claim that he had not been provided transcripts of the relevant hearings which would have constituted such a record.

Ja-Denal-to-rehear-to-TRAP-10-JULy-20211Download

On August 16, White filed an "Application for Permission to Appeal" to the Tennessee Supreme Court under Tennessee Rules of Appellate Procedure Rule 11 which was not acknowledged by the court until September 3. White awaits a decision on that filing.

Jason-TRAP-11-to-the-TRAP-10-20215891Download

One of White's points on appeal was that Gaia's credibility is impeached. While Gaia claimed to the Shelby County grand jury that Cole sent White text messages about the anticipated drug-filled package, Gaia admitted on the witness stand to sending one of the texts himself. A log of calls sent from Cole's phone reveals that all three texts were sent while Cole was in police custody and her phone confiscated.

A July 30 screenshot of White's record from the Shelby County Criminal Justice System Portal showed the two initial charges as not prosecuted ("Nolle Prosequi"):

Shelby County Criminal Justice System Portal



Disposition Events

08/25/2017 Disposition -

Carter, Robert

- 1 CONSP-PROMOTE MANUF METHAMPHI TAMIN Nolle Prosequi no Court Costs
- 2 CONSP-PROMOTE MANUF METHAMPHETAMIN Nolle Prosequi no Court Costs

However, screenshots taken on August 24, 2021 show White's conviction on charges associated with a "school zone," a more serious crime, with no reference to the original charges:

10/11/2017 Disposition -

Judicial Officer
Carter, Robert

1 CONSPIRACY-MANUF/DEL/SELL/METH IN SCH ZON Conviction after Trial

10/11/2017 Disposition -

Judicial Officer
Carter, Robert

2 CONSPIRACY-MANUF/DEL/SELL/METH IN SCH ZON Conviction after Trial

The Bill of Indictment indicates charges on the two lower-class felonies:

STATE OF TENNESSEE

To All Sheriffs of State of Tennessee- GREETING;

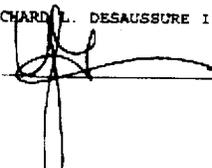
You Are Hereby Commanded to take the body of
JASON WHITE

If to be found in your County, and him safely keep, so that you have
him before the Judge of the Criminal Court of Shelby County, at a term
of said Court, to be held for the County of Shelby, at the Court House
in Memphis, then and there answer the State of Tennessee, on a
TRUE Bill of Indictment, against him for

CONSP-PROMOTE MANUF METHAMPHETAMINE	39-17-433	16 02794
CONSP-PROMOTE MANUF METHAMPHETAMINE	39-17-433	16 02794

Herein fail not and have you then and there this Writ.

WITNESS, RICHARD L. DESAUSSURE III, Clerk of said Court, at
office, in Memphis.

RICHARD L. DESAUSSURE III, Clerk

D.C.

The Judgment Sheet indicates convictions on the higher-level felonies:

While preparing for trial, White expressed frustration to and about Ferguson's representation and denied any involvement in the drug conspiracy.

Mr. Claiborne Ferguson

I am writing to you since my trial date is near that I wanted to inform you that I will be testifying on my own behalf due to the fact no one wants to hear the truth and I will NOT sit back and allow anyone to paint a bad picture of myself I have nothing to ~~hide~~ hide beside my past and that is something I have never ran from. I know the person that I have become and that's the person I will show to the jury. I had nothing to do with any drugs or seeding any drugs to Miss Cole house. I am still lacking the understanding of why you with-drew my motion

Documents Ferguson filed on White's behalf can be read here:

[Ja-Part-F-PCPADownload](#)

Neither Cole nor White testified at trial, and Mullins's taped and written confessions were discounted, Kimberly, who was in attendance, said. According to Atkinson, a transfer request was submitted to bring Mullins to Shelby County to appear for the defunct August hearing.

On May 16, 2016, Scruggs went to Carter's courtroom without White or his representative present and imparted to the judge his version of White's history and the new charges, causing Jason to accuse both of bias against him after reviewing the transcript.

[Ja-Transfer-Order552Download](#)

On May 14, 2020, White filed a motion asking the judge to recuse himself from the case for what White said was "ex parte communication" with Scruggs and "state and federal authorities" which was denied. White has also moved to have the 30th Judicial District recused from the case.

[Ja-Motion-to-Recuse-revised-2020584Download](#)

On August 27, the State of Tennessee filed a motion to quash the subpoenas for Weirich and Scruggs, although misstating on page 3 the "defendant" as a retired judge.

[Jason-White-Motion-to-Quash-SubpoenaDownload](#)

In response, White filed a Motion to Compel dated September 9, 2021 stating, in part, "Petitioner states the information/testimony from DAG Amy Weirich is imperative in establishing facts that Petitioner's attorney Claiborne Ferguson failed to challenge the jurisdiction..."

Jason-Motion-to-Compel-2021-filed588Download

In an email to this writer regarding her son's ongoing efforts to obtain justice, Kimberly wrote, "I am concerned for Jason's life, due to his determination to expose the corruption in this case. It is very clear even to a blind person the misconduct, constitutional violations, false evidence and false testimony these corrupt officials and their parties that assisted in covering and colluding to convict Jason and Kristina. The Judicial parties are just as determined to sweep it under the rug like they have in many other cases."