

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT JACKSON

Shelby County Criminal Court

No. W2022-01437-CCA-R3- PC.

APPELLANT'S BRIEF

Jason White
v.
State of Tennessee

REQUESTION ORAL ARGUMENT

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APPELLANT Pro-se

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. DID POST-CONVICTION COURT ABUSE ITS DISCRETION BY FAILING TO RECUSE HIMSELF?
 2. DID POST-CONVICTION COURT ABUSE IT'S DISCRETION BY DENYING MR. WHITE A FULL AND FAIR POST-CONVICTION PROCEDURE IN DENYING MR. WHITE;
 - a. THE RIGHT TO BE PRESENT AS A PRO-SE LITIGANT.
 - b. THE RIGHT TO PRESENT RELEVANT WITNESSES AT HIS EVIDENTIARY HEARING.
 3. DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE BY FAILING TO PREPARE A STRATEGY BASED DEFENSE?
 4. DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO FILE MOTION TO DISQUALIFY DUE TO A CONFLICT OF INTEREST?
 5. DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO INVESTIGATE INTO DOCUMENTARY EVIDENCE?
 6. DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO OBJECT TO INADMISSIBLE EVIDENCE AT TRIAL?
 7. DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO CHALLENGE THE COURTS JURISDICTION TO CONVICT?
 8. DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO FILE PRE-TRIAL MOTION TO DISQUALIFY;
 - a. JUDGE CARTER DUE TO JUDICIAL MISCONDUCT?
 - b. ASSISTANT DISTRICT ATTORNEY DUE TO PROSECUTION MISCONDUCT?
- DID TRIAL COUNSEL CUMULATIVE ERRORS CAUSE PREJUDICE?

"STATEMENT OF THE CASE"

Jason White was arrested after the Shelby County Clerk issue a capias [see V.1⁸ Exhibit 3 Pg. 1-2] on April 22 2016 on Mr. White following an indictment on April 21 2016 that read conspiracy promote manuf. Methamphetamine T.C.A 40-17-433 [2] counts under indictment number 16-02794

On March 30 2017 Mr. White was re-indicted to add Montez Mullins as a co-defendant [see Archived Record in State v. Jason White W2018-00329-CCA-R3-CD, Vol.2 p.46-47[hereinafter "A.R."].¹ On July 14, 2017, a Shelby County jury found Mr. White guilty of two class A Felonies ; count one Conspiracy to Commit Unlawful Possession of Methamphetamine with the intent to sale in a Drug free zone and count two Conspiracy Unlawful Possession of Methamphetamine with the intent to deliver in a Drug free zone. On October 11, 2017 Mr. White was sentenced to sixty [60] years at a one hundred percent [100 %] as a career offender in the Tennessee Department of Correction. Mr. White conviction were affirmed on appeal April 2019, the Tennessee Supreme Court denied Mr. Whites application for permission to appeal. State v. Jason White, No. W2019

ON April 21,2020 Mr. White file a timely pro se Petition for post-conviction relief [V.1; 1-149²]. On May 15, 2020 Mr. White file a Motion for Recusal with affidavit [see V.2; p217-203] this was summery dismiss by Judge R. Carter [see V 2; p.222]. On June 25 2020 Mr. White file a motion to be transported by to Tennessee[see V.2; p. 219] On November 5, 2020 Judge Carter sign order for Mr. White to pro-se as Shea Atkinson as his elbow counsel[V.2;p.224] On December 30 2020 Mr. White pro-se file a notice to the Court request further transcript[see V. 2;p.226]On

¹ Petitioner respectfully request that this Court take judicial notice of this particular archived record.

² The number preceding the semi-colon represents the volume of the post-conviction record, and the number following the semi-colon represent the page number within that particular.

2021, Mr. White pro se file his amended Petition for post-conviction. ON June 28, 2021 Mr. White also file a extraordinary appeal due to the lower Court disregard to Mr. White rights to be present during his post-conviction proceedings also not be able to obtain transcripts. On October 20, 2021 Mr. White file a second motion to recusal [see V, 3; P.422] this motion was also summarily dismiss [see V.4; p.497] after Judge Carter had Mr. White transport order cancel [see V.4 p.496 on October 28 2021] and stated in the order denying motion that he would have the Shelby County District Attorney Office to quash Mr. White's subpoena file against himself [Judge Carter] [see V.4; p.497] also [see file subpoena V.4; p.473] Mr. White also file an Accelerated Interlocutory appeal due to Judge Carter fail to Recuse himself [Jason White V. State of Tennessee W2021-014373-CCA-T10B-CO]. Mr. White pro-se also file subpoena's on Richard DeSaussure the Shelby County Clerk [see V.4; p.512], Assistant District Attorney Chris Scruggs [see V.4; p.514], and ex Detective Mark Gaia [see V.4; p. 502]. On July 5, 8, 11 2022 a hearing was conducted by Judge Robert Carter Jr. after Judge Carter delay the hearing four times over the course of one year and four months by canceling Mr. White's transport [see V.4; p. 496, 501, 508]. ON September 15, 2022 the Post-Conviction Court entered a written order denying Mr. White's Petition for post-conviction relief. [see V.4; p.516] On October 11, 2022 a timely Notice of appeal was file, case number W2022-01437-CCA-R3-PC. [see V.4; p.535] was sign to this case.

STATEMENT OF FACTS

I. PRE-TRIAL;

On April 21 ,2016, Mr. White was indicted by the Shelby County Grand-jury, on the following day April 22, 2016 the Shelby County Clerk's Office issued a warrant in the form of a Capias, this evidence was introduced at Post-Conviction [see V.18; Exhibit 3]. This evidence would show someone in Richard DeSaussur's Office of said Clerk witness to a True Bill indictment for two [2] counts for Consp-Promote Manuf. Methamphetamine under T.C.A 40-17-433 that was entered into the system.

On May 16, 2016 the Assistant District Attorney was allowed to personally appear in Division 3 Court-room before the Honorable Robert B. Carter without Mr. White nor his counsel being present during this ex-parte hearing, transcripts were introduced at Post-Conviction of said ex-parte conversation [see V.18; Exhibit 13]. The facts are clear that Assistant District Att. Chris Scruggs stated; " on a matter not on the courts calendar," This ex-parte hearing became a tumor that took on a growth of its own, when the Assistant District Att. Scruggs stated, "okay. I think the court will enjoy the facts of this case. I've never seen anything like it." Judge Carter did not stop this communication but continue by asking the Assistant District Att. his own question about the facts by stating " is the shipping not involved in this?" further stating, " everything else is available." A.D.A Scruggs was also able to give his opinion on Mr. White's gang affiliation and past criminal record.[see V.18; Exhibit 13 p. 4-5]. A.D.A Chis Scruggs even had to remind Judge Carter during Mr. White's arraignment about this May 16, 2016 ex-parte hearing due to Mr. White not being on Judge Carter's docket by stating; " be as it may Judge, he is here. This is the one I addressed you about a couple of weeks ago on May 16th about a transport order since he." [See V.18; Exhibit 2]. Mr. White was appointed Robert Felkner during his arraignment on June 2, 2016. On September 23, 2016 Mr. White hired Att. Ferguson Law firm [see V.18; Exhibit 5] to represent him on two [2] counts Consp.- Promote manuf. Meth. Case # 16-02794 [see V.18; Exhibit 5].

On February 7, 2017 Att. Ferguson entered an order to transport Montez Mullins to the Shelby County Courts as a defense witness [see V.18; Exhibit 4] sign by Judge Carter. On April-13-2017 Mr. White was re-arraign under indictment 17-01568 to add Montez Mullins as a co-defendant, [see V.18; Exhibit 7]. On April-28-2017 Att. Ferguson inform Judge Carter that Mr. White wanted him to be removed as his representation [see V.18; Exhibit 6 p.4]. On April-3, May-6, and July-7-2017, Mr. White had wrote Att. Ferguson up to the Board of Professional Responsibility,[see V.18; Exhibit 14,15,16]. On July-10-2017 the morning of trial to begin Att. Ferguson accuse Mr. White of assaulting him. [See V.18; Exhibit 12].

II. Proof at Trial;

At trial, the State relied solely on testimony of Detective Mark Gaia³ who testifies that he received a Fed-Ex package. This key evidence, submitted upon sworn- oath testimony, was shown to have be false during a Post-Conviction hearing when the evidence of a U.P.S shipping label was introduced [see V.18; Exhibit 19] Det. Gaia also testify that he enter Ms. Cole home at 15:40 hr. [see A.R V.8 P.138]. This material fact was shown to have been false during Post-Conviction when Ms. Cole arrest ticket was introduced to establish that Ms. Cole was arrested at 15:30 hrs. [see V.18; Exhibit 18] besides being irreconcilably contradictory on its own, as the opposing set of fact could not both be true, the actual time of Ms. Cole arrest [as found on the arrest ticket] this establish that Detective Gaia's sworn-oath testimony of Ms. Cole having sent text messages to Mr. White confirming the package had arrived also could not be true as it was not possible for Ms. Cole to have sent text messages at 15:38:45, 15:39:28, and 16:27:18 to Mr. White after being taking into custody [see A.R. Exhibit 31, p. 33, texts 813-815]. The State also use Detective Gaia to allege Ms. Cole was communicating with Mr. White by contacting 901-208-9195 while she was in Jail-East due to 901-208-9195 number being listed to Kimberly White in order to identify [see A.R. V.8 P.68] Mr. White, when Det. Gaia testimony was again

³ Mr. White Pro-se did subpoena Detective Mark Gaia however the return subpoena state not to be found but the body reads that a, F/W answer the door, refuse to open glass door, advise Mark Gaia is ex Bartlett officer now at fed-ex , will not deal with this, close door [see V.18; Exhibit 20]

shown to be false as evidence was introduced at Post-Conviction to show that very cell phone number was listed to a Michael Underwood not to Kimberly White also Ms. White testified that 901-208-9195 was never listed to her name [v.16 p.265]. The state also introduced out-of-court statement allegedly made by Co-defendant, Montez Mullins through Detective Robert Christian. Det. Christian testifies in his own opinion that Mr. Mullins was not being truthful due to Ly words and swearing was a sign's of deception. [See A.R. V.8 P.231-232]. Montez Mullins was brought forward as a defense witness by Attorney Ferguson due to the facts Montez Mullins was the responsible for the package and that Ms. Cole did not know of the illegal content plus Mr. White had no knowledge of Mr. Mullins sending the package. The State also relied on a Prison investigator Andrew Brown who testified in his own opinion of why an inmate in the prison would need access to pay-pal or green dot's to purchase contraband tobacco products, narcotics, cell phones even weapons, and by homemade knives. [See A.R. V.8 P.261].

III. Pre-Post-Conviction proceedings;

Mr. White has been held in confinement in the State of New Mexico at the request of the Tennessee Department of Correction and the Shelby County District Attorney Office since May 20, 2019. Mr. White did file his Petition for Post-Conviction on April 21, 2020 and made numerous attempts to have the opportunity to address the courts as his own Attorney Pro-se. These attempt were denied and or ignore by Judge Carter who was making decision on Mr. White's case without Mr. White being present as the Judge took action in denying Motions to Recuse [see V.2; p.222] by having witness discussion with the state and elbow counsel in complete disregard to Mr. White having the opportunity to personally address the courts, even stating that he would have the District Attorney office to quash his own subpoena [see V.4; p. 497]. On May 19, 2022; Judge Carter had a full discussion with the State Attorney's in being present in taking action on filing motion to quash other subpoena that Mr. White had file[V.13 p.9-13] by stating in court; " I would ask Ms. Byrd. Maybe she can file a motion to quash

because I can't see any reason to subpoena him" this took place without Mr. White being present as his own Attorney pro-se.

IV. Post-Conviction Hearing

Montez Mullins testified that he was willing to testify at Mr. White trial and that he had discussed this with Attorney Ferguson prior to becoming a co-defendant[see V.15; P.71-72] Mr. Mullins gave a Detective Robert Christian a statement and was willing to testify that the package of meth. Belonged to himself and that he told Ms. Cole the package contained jewelry, and that he had no idea how Mr. White got involved.[see v.15; p.73-74] further testifying that he was the person to had received text message from Ms. Cole cell-phone but that he could not say who sent him the text message[see V.15; p.75]. Mr. Mullins further testified that he had never been to Ms. Cole residence. Mr. Mullins also testified that it was Attorney Ferguson who assists his Attorney as well as Ms. Cole's Attorney in not taking the stand to testify [see V.15 p.78-79].

Robert Felkner testified that it was not typical for someone to be arrested for one charge after indictment and then brought before the courts two months later to be arraigned on different charges[see V.15; P.83]. Mr. White Pro-se introduced this indictment [V.18;Exhibit 1], while Mr. Felkner testified the indictment date was April-21-2016, and that the capias was issued on April-22-2016[see V15; p.87-88] also [V5; Exhibit3] the day following the indictment that reads charges for conspiracy to promote , manufacture, methamphetamine. Mr. Felkner also testified that he would not know how that could have happened with the different of charges with the clerk office⁴, but did testify that the indictment was not scan until Sept. 23, 2016 five [5] months later [V.15; p.89] further read from the arraignment transcripts that Mr. White was only arraigned for conspiracy to possess with intent to sell meth. over 300 grams with only one count [1] [see V15; p.93] Mr. Felkner further read from the

⁴Mr. White pro-se issued a subpoena on Richard DeSaussur the Shelby County clerk who issue Mr. White capias after witness to a true bill indictment.

arraignment transcripts that Mr. White was not on Judge Carter docket and A.D.A Scruggs had to remind Judge Carter of a May 16, 2016 ex- parte hearing, further testifying that he was never inform of any kind of hearing between the Judge and A.D.A [see V15; p.100-101].⁵

Attorney Claiborne Ferguson testified that he had been practicing law for about 22 yrs. Further testifying that he was hired by Mr. White's mother, by looking at the contract that was introduced [see V.18; Exhibit 4], to represent Mr. White on indictment # 16-02794 for two counts[2] conspiracy to promote the manuf. Meth. However Mr. Ferguson stated the charges were incorrect, but could not recall who wrote the charges on the contract and that he believed that was due to J.S.I now is called C.J.S which is the computer system that the clerk's office⁴ uses in order to keep up with the cases. This system is where lawyer's would get, case number and charges from, but stated Mr. Whites were incorrect [see V.15; p.116-117]. Mr. Ferguson further testified that Mr. White had no standing to contest evidence that was retained from Ms. Cole's cell-phone, and that the statute under 40-6-110 did not apply to the situation were Detective Gaia search Ms. Cole phone by sending text message after Ms. Cole was arrested without a search warrant.[see V.15; p.124]. Mr. Ferguson testified to [v. 18; Exhibit 3] of Mr. White's capias that was use to introduce the facts that it showed Mr. White was arrested for two[2] counts of conspiracy to promote manuf. Meth under statue T.C.A 39-17-433 that shows on Mr. Ferguson's contract [see V.15; p.139].

Mr. Ferguson continued to testify the charges were incorrect, Mr. White continues to point out that Richard DeSaussure was necessary to be called as a witness⁴. Mr. Ferguson felt that it was not important to challenge the Court's jurisdiction by stating that a capias does not count as a warrant [see V.15; p.142] but further testified that the capias gave the police officer the authority to arrest [see V.15;P.143] Mr. Ferguson testified that he did not do any investigation due to the facts this was a simple

⁵Mr. white was allow to introduce transcripts of the ex-parte conversation between Judge Carter and A.D.A Chris Scruggs but could not ask Attorney Felkner or call Chris Scruggs or Judge Carter as witness even know they were subpoena

case, with what he believed was nothing needed [see V.15;p.145], but did speak with Montez Mullins due to Mr. White informing him that Mr. Mullins was fully responsible, and that he had filed a motion to have Mr. Mullins brought in as a witness.[see V.15;p146] also [see V.18; Exhibit 4] because Mr. Ferguson believe he would be a good witness.

Mr. Ferguson also testified that the State was allowed a continuance on February 21, 2017. Mr. Ferguson testified that he did not object or file any motion once the State made Montez Mullins a co-Defendant [V.15; p149-150], that the State has the right to indict anyone they wish to and that sometime the constitutional rights are at odds with each other [see V.15; p.150]. Mr. Ferguson further testified that even if he did file a motion to sever Mr. Mullins, he still would not have had to testify because he could not call him as a witness, but he believed that the State made him a co-Defendant because they knew Mr. Mullins was taking responsibility for the crime.

Mr. Ferguson refused to testify to the facts that he could not take action to procure or secure Mr. Mullins as a defense witness [see v15; p.152], but did take knowledge that he took no action, that it was terrible for Mr. White due to Mr. Mullins not being able to testify [see V.16;p.153].

Mr. Ferguson testify that he did not recall Mr. White wanting him remove from further representing him, because it would have been easy [see v16;p.154] Mr. White introduced transcripts from April 28, 2017 [see V.18; Exhibit 6] that shows Mr. white wanted Mr. Ferguson removed from representing him. Mr. White asked Attorney Ferguson who responsibility is it to introduce the indictment to the judge, Mr. Ferguson testified that he did not know, further asking Mr. Ferguson is to the prosecution or the defendant Attorney job to do so, Mr. Ferguson again testified he did not know how that happens.[see v16;p.157]. This was asked due to it being Attorney Ferguson who took the action to introduce the second indictment to add Mr. Mullins a co-Defendant [see V.18; Exhibit 7] Also [see V.16; p. 158-159], Mr. Ferguson continued, to testify that he had no memory of the relevant facts,

or even know that Mr. White was introducing documents, and further testified that Judge Carter would not relieve him from his obligation [see V.16; p161].

Mr. Ferguson did admit that Mr. White was complaining to the Board of Professional Responsibility [see V.16; p.166]. Mr. Ferguson further testified that while he was in the back of the Shelby County courts, Mr. White stiff armed him and that he did not have the authority to recuse himself, but also testified that he did not object to the Judge decision to continue allowing him to represent Mr. White and further testified that he would never object against the Judge's decision to move forward [see V.16; p.166]

Attorney Ferguson also testified that, if there was a conflict of interest that it was created by Mr. White [see V.16; p.166]. Attorney Ferguson took knowledge that Mr. White had to address the Courts on his own behalf the second day of trial. [See A. R. V.8 199-200]. Mr. White Pro-se introduce his arrest ticket [see V.18 Exhibit 8] Mr. Ferguson testified that this document also reflected the same charges as the contract as well as the capias further testifying that the order for the presentence report also show to be the same charges conspiracy to promote, manuf. Meth. [See V16; p.176-177] Attorney Ferguson continues to testify that the charges were interred in the system incorrectly by the clerk's office⁴. Attorney Ferguson testified that, during trial he did not believe he had any grounds to object to Detective Mark Gaia's testimony about who he believed Ms. Cole was sending text messages to [see V16; p189-190], further testifying that he had no ground to object to text messages that were sent by Detective Gaia³. Attorney Ferguson further testify that he made no objection during trial to the State introduction of Montez Mullins out of Court statement because it was nothing objectionable to. [See V16; p.191] Mr. White further asked Attorney Ferguson due to the State introducing Mr. Mullins out of Court statement in order to attack Mr. Mullins credibility didn't that prejudice Mr. Whites defense, Attorney Ferguson stated he had no opinion as to that. [See V.16; p.195]. Attorney Ferguson did give his

example in why Mr. Mullins could not be called as a witness by saying once Mr. Mullins was charged he had a right to remain silent, "so he had a right to remain silent and you have a right to compulsory process. Those two rights are in conflict with each other and his right to remain silent is superior to my right to call a witness". [See V.16; p.196]

Deputy Darius Jones testified that he works for the Shelby County Sheriff's office, and that he was working Division 3 Court-room in 2017, also testifying that he recalled the altercation that took place between Mr. White and Attorney Ferguson as he was working with inmates the morning of July 10th of 2017. Mr. Jones testified that he was standing on the outside of the door, but the door wasn't closed. Further testifying that he heard Attorney Ferguson yell out something to the effect of "Jason get your hands off of me" [see V.16; p.228-229], that he immediately went to the back, to see Mr. White and Attorney Ferguson were still standing face to face with Mr. White's paper work still in hand. Mr. Ferguson told Deputy Jones that Mr. White had choked him.[see V.16; p.229] Mr. Jones further testified that there was no evidence of a struggle, and that Mr. White did not want Attorney Ferguson to continue to represent him.[see V.16; p.229] Mr. Jones testified that everything was reported to the Judge Carter. Mr. White introduces the incident report made by Deputy Jones [see V.18; Exhibit 12] to refresh Deputy Jones on the fact that Mr. White had informed Attorney Ferguson that he and his family plan to take legal action against Attorney Ferguson [see V.16; P.231] also [see V.18 Exhibit 12]. Deputy Jones gave Mr. Ferguson an opportunity to bring Mr. White out into the Court-Room but Mr. Ferguson insisted on speaking with Mr. White in the back [see V.16; p.235].

Mr. White attempted to call other witnesses like Judge Carter, who stated he had the duty to quash subpoena that are not properly issued.[see V16; p .240] Judge Carter was necessary to be subpoena due to transcripts that were found by Mr. White Pro-se. These transcripts were highly prejudicial and Attorney Ferguson failed to recuse Judge Carter. These transcript were allowed to be

introduced as evidence [see V.18 Exhibit 13] Attorney Ferguson stated Judge Carter would not allow him to be removed as Mr. White representation knowing there was a conflict of interest, and these transcripts could have proved Judge Carter's personal interest and bias toward Mr. White and could further explain how the charges were change due to Mr. White not being in Judge Carter's Court-room.[see V.16; p.240]

Mr. White attempted to call Assistant District Attorney Chris Scruggs also as a witness due the same transcript on May 16, 2016 [see V.18; p.13] to show how Attorney Ferguson failure to recuse Mr. Scruggs from further prosecution due to prosecution misconduct. IT could had also been determine how, Mr. Scruggs was allow to personally appoint Judge Carter to preside over Mr. White criminal procedure through an Ex-parte conversation[see arraignment transcript where A.D.A Scruggs had to remind Judge Carter of this conversation, V.18;p. 242]. This ex-parte conversation was highly prejudices in violation of Mr. White due process to enjoy his right to counsel also this allowed Mr. Scruggs to lay out the state theory and the opportunity to prejudice Judge Carter against Mr. White. [See V.16; p. 242]

Mr. White attempted to have Richard DeSaussur the County clerk subpoena due to the fact his office issue a capias who witness to a True Bill Indictment for conspiracy for Promote to manuf. Meth. and who also inter the same charge's into the system, even during Mr. White Post- Conviction hearing it become even clear of why it was necessary for the County Clerk to be present in order to establish that Attorney Ferguson was ineffective for failure to challenge whether the Court had jurisdiction to convict because Attorney Ferguson and Attorney Felkner both tried to testify these were either change or inter into the system incorrectly by the Shelby County Clerk Office. [See V.4; p.512]

Mr. White attempted to subpoena Detective Mark Gaia³ because Attorney Ferguson fails to use documentary evidence during trial to impeach his testimony. These document were allowed to be introduce during Post-Conviction [see V.18; Exhibit 17, 18, 19] first Exhibit would had shown that Ms.

Cole was already arrest at 15:30 hr. so it would had been impossible that Detective Gaia executed his search warrant at 15:40 [see A.R. V.8 P. 138], or that Ms. Cole could had sent the first two text message from her cellphone at 15:38:45 or 15:39:28 [see A.R. V.3 P.33 texts 813-815] When it was proving during trial that Detective Mark Gaia had sent the third text at 16:27., furthermore Detective Gaia testify that he received a fed-ex package from Detective Adam Collins when in fact he had received a U.P.S Package [see V.18; Exhibit 19] that show a U.P.S package label address from Adam Collins to Detective Mark Gaia. Plus Detective Mark Gaia testified at trial that Ms. Cole was contact two different number while in jail east one that was listed to her Daughter but the second number was 901-208-9195 that was listed to Kimberly White being Jason White mother, however, evidence introduce during Post-Conviction would show that number was listed not listed to Kimberly White but to a Michael Underwood [see V18; Exhibit 19]. Judge Carter claim that Mark Gaia could not be found when in fact the return subpoena clearly show the Sheriff Department knew where Detective Gaia lived and by the return subpoena a W/F answer the door and told them he now at fed-ex [see return subpoena V.18; Exhibit 20] Detective Gaia was the State key witness. Mr. Gaia was subpoena to Co-Defendant Cole Post-Conviction stated in Judge Carter denial of Mr. Whites Post-Conviction [see V.4; P.516]

Kimberly White testify that she is Jason White's Mother and that she had hire Attorney Ferguson to represent Mr. White. Ms. White further testified that she tried to communication with Attorney Ferguson on the behalf of her son about Detective Gaia not being truthful, and told her that did not matter that the jury would believe the Detective over anyone else. [See V.16; p.264] Ms. White further testified that Attorney Ferguson had threatened her in the hallway, that he would have her arrested.[see V.16; p.264] Ms. White also testified that number 901-208-9195 has never been listed to her name. Ms. White did testify that the number was listed to Michael Underwood who was her husband [see V16; p.265] Ms. White also testify that she had been on a conference call and overheard

Attorney Ferguson call her son a little bitch [see V16; p.266] Ms. White also testified that she even started writing Attorney Ferguson up to the Board OF Professional Responsibility. [See V16; P.267]

Jason White testified that he was unaware of the charge's before being brought into Judge Carter Court-room even once Judge Carter appointed Robert Felkner during Mr. Whites arraignment Mr. Felkner refuse to speak with Mr. White even after Mr. White made the quest[see V.18; Exhibit 2 p.6] also [see V.17; p.9] Mr. White did testify that his family had hired Ballin firm but after speaking with Blake Ballin Mr. White had decided that he did not think he was best for his Attorney due to Attorney Ballin waiting a month before coming and speaking with Mr. White.[see V.17; p.9-10] There after Mr. White Mother had hire Attorney Ferguson firm to represent Mr. White who help Mr. White get sent back to the prison from the Shelby County Jail.[see V.17; p.10-11] Mr. White testify that he did inform Attorney Ferguson that a person name Montez Mullins was the responsibly person for sending the package to Ms. Cole home and that he[Mr. White] had nothing to do with it.[see V17; p.11] Attorney Ferguson had Mr. Mullins transported to the Shelby County Jail as a witness on February 20th 2017 around the same time Attorney Ferguson had Mr. White transported in for trial. Mr. White further testified that the D.A's office was allow for a continuance [see V.17; p. 11] Mr. White testified that he had wrote Attorney Ferguson due to his concerns about Attorney Ferguson was not taking action due to someone else taking responsibility by giving a full confession, Mr. White introduce a letter from April-3-2017 [see V.18; Exhibit 14] there was no reply from Attorney Ferguson [see V.17; p.12] On April 13, 2017 Mr. White testified that he was brought in to be re- arraign on a new indictment, and it was his own Attorney who was introducing the second indictment against him to add his only witness as a co-defendant [see V.17;P.12] also [see V. 18 Exhibit 7] Mr. White further testified that after thinking about Mr. Ferguson action that he attempted to contact Attorney Ferguson however Mr. White attempt went on deaf ears, so Mr. White started writing attorney Ferguson up to the board of Professional Responsibility due to Mr. White no longer trusting Attorney Ferguson, Mr. White introduce letter's as

proof[see V.18; p.15,16]. Mr. White further testified that he wrote Attorney Ferguson a letter want him to be remove as his counsel[see V17; p.12-13] Mr. White also put on proof of the April 28, 2017 transcripts that shows Attorney Ferguson informing Judge Carter that Mr. White want him removed [see V.18 Exhibit 6]. Mr. White also testified that he contacted Attorney Ferguson in hope they could get a understanding due to the facts he would not recuse himself and during this conversation Attorney Ferguson call Mr. White a "little bitch"[see V.17; p. 13-14] this was witness by Mr. Whites mother Kimberly White and girlfriend Tinyko Koch. Mr. White testified that he attempt to show Attorney Ferguson that Detective Mark Gaia was not being truthful due to the facts Detective Gaia was not being honest about the cell-phone number 901-208-9195 being listed to Kimberly White and even attempt to give Attorney Ferguson a copy of the phone bill, but Attorney Ferguson refuse to take it, Mr. White introduce that cellphone bill [see V.18; Exhibit 17] that would show that number was listed to Michael Underwood.[see V17; p.23] Mr. White testified that the State was allowed to use this number to identify Mr. White on the other end of jail call with co-defendant Cole. Mr. White testified that he attempt to get Attorney Ferguson to investigate due to the cellphone bill, the fact Ms. Cole arrest ticket show she was already in arrested at 15:30 hr. Ms. Cole arrest ticket was introduce as proof[see v.18; Exhibit 18] and the fact there was a picture of a shipping label to show Detective Gaia did not receive a Fed-ex package but a U.P.S this was introduce as proof [see V.18; Exhibit 19] also [see v.17; P.33] Mr. White also testified about the incident that took place in the back of the Courtroom the morning of trial between himself and Attorney Ferguson. That he was having a conversation with Attorney Ferguson when Attorney Ferguson made an out bust stating " get your fucking hands off me", Mr. White said he look at Att. Ferguson like what? Mr. White testified that he knew he was already accusing Att. Ferguson of working with the D.A'S Office against him and even writing Att. Ferguson up to the Board Of professional Responsibility [see V17; p. 34] that Att. Ferguson would not file any Motion to be removed off Mr. White case. Mr. White even testified that during trial that Att. Ferguson would refuse to

communicate with Mr. White even made him sit behind Att. Ferguson and even when Mr. White did attempt to speak with Att. Ferguson he stated to Mr. White that if he did not sit down he would have him removed. [See V.17; P.35] Mr. White further testified that during trial he had to address the Court on his own behalf and Att. Ferguson or the Judge Carter fail to direct Att. Ferguson to communicate with Mr. White [see V17; p. 36]

ARGUMENT

"DID POST-CONVICTION COURT ABUSE ITS DISCRETION FOR FAILING TO RECUSE?"

Mr. White Pro-se did file two Motions to recuse Judge Carter, these Motions were file due to the facts that Mr. White Pro-se found highly improper transcripts that would show that Assistant District Attorney Chris Scruggs engage in an ex-parte hearing with the presiding Judge Robert Carter Jr. Mr. White or his counsel present weeks before Mr. White was brought into Judge Carter Courtroom for arraignment. Mr. White had a right to present these issues under ineffective assistance of counsel in front of a different Judge. The Tennessee Supreme Court recognized this in its August 2020 ruling in; Brice Cook v. State W2018-00237-SC-R11-PC which states " 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," also due to Judge Carter being an important witness to establish how this ex-parte hearing affective Mr. Whites right to have his trial heard before a unbiased decision maker and his Attorney failed to challenge pre-trial .Mr. White had a right under the U.S. v. Morgan standard to subpoena Judge Carter that lays out the facts at 421, 61. Ct. at 1004; " Courts will only consider compelling judicial testimony in the presence of extreme and extraordinary circumstance, such as a strong showing of bad faith or improper behavior. It is clear by the transcripts that Judge Carter engage with A.D.A Chris Scruggs that would undermine the whole judicial process in order to protect a person Due Process by Judge Carter further the ex-parte conversation [see V.18; Exhibit 13] even during the Post-Conviction hearing Judge Carter refuse to allow Mr. White to question Attorney Felkner about these transcripts by stating this witness has no way of knowing. He just got done saying he never saw you until the June date this was directly toward the transcripts of the ex-parte hearing that took place on May 16, 2016 [see V.15; p.101]. Set out by the Tennessee constitution art.6 section 11 that "no

supreme or inferior Court shall preside on the trial of any cause in the event of which he may be interest", furthermore "this is to guard against the pre-judgment of the rights of litigant and to avoid situations the litigant might have to conclude that trial court had reached a pre-judged conclusion because of interest or favor." State v. Austin 87 S.W.3d.at 470 Here it is clear during Judge Carter order of denial that He [Judge Carter] would direct the District Attorney Office to file Motion to quash his subpoena in the order of denial of Mr. White's motion to recuse [see V.4; p.473] in violation of rule1.3 of the code of judicial conduct when the State Attorney do not represent the Judge's and by Judge Carter own comment would demonstrate bias, due to the facts that Judge Carter refuse to allow Mr. White Pro-se to call Assistant District Attorney Chris Scruggs as a witness to answer question regarding the ex-parte hearing. It is clear that Judge Carter was asking the District Attorney Office to look out for his best interest and Judge Carter was looking out for their best interest during Mr. Whites Post-Conviction Proceeding, when it was Judge Carter who was giving the State Attorney legal advice to file Motion to quash Mr. White other subpoena's [see v. 13 p. 9-13] without Mr. White being present. The Judge should have recused himself even if the Petitioner does not file a Motion to recuse to ensure the fairness of the proceedings." Marcus Deangelo Lee v. State No. W2013-01088-CCA-R3-CD. 2014 TENN. CRIM. APP Lexis 203, 2014 WL. 902450 at *3" [Tenn. Crim. App. March 7, 2014]. An abuse of discretion occurs when [a] trial court applies an incorrect legal standard or reaches a conclusion that is illogical or unreasonable and causes an injustice to the party complaining. Here it is clear by the record that Judge Carter should have recused himself to protect the interest of justice due to the facts that the Petitioner for Post-Conviction Petition surrounded the facts of Judge Carter action to engage in an improper ex-parte hearing with the Assistant District Attorney Chris Scruggs. Judge Carter had a personal interest to protect and therefore could not make a sound judgment call. Therefore the Petitioner should be entitle to a new Post-Conviction Evidentiary hearing with a different Judge

"DID POST-CONVICTION COURT ABUSE ITS DISCRETION BY DENYING MR. WHITE A FULL AND FAIR

POST-CONVICTION PROCEDURE IN DENYING MR. WHITE;

[A] The right to be Present as a pro-se litigant

Mr. White did exercise his right to represent himself during his Post-Conviction proceedings due to the facts that Mr. White could not trust any Attorney that Judge Carter would had appointed. A person does not have a Constitution right to the assistance of counsel in post-conviction, however a person does have a statutory right set out by Tennessee statue T.C.A 40-30-107 [b] [1] A person shall enjoy his/her right to counsel in Post-Conviction by these laws the Constitution proves a person to be protected under the 14TH amendment to United State Constitution set out by the Equal protection of due process. Here Judge Carter did sign off on Mr. Whites, to proceed pro-se however Judge Carter refused to allow Mr. White to be transported back to the Shelby County by continue to cancel Mr. White transport orders [see v.4; p.496,501 ,508] in order to have the opportunity to be heard at a meaningful time and in a meaningful manner set out in Stokes V. State, 146 S.W.3d 56, 61 [Tenn. 2004][quoting House, 911 S.W.2d at 71] the Courts clearly denied Mr. White opportunity. This causes Mr. White the chance to address the courts on transcripts and witnesses, as well Motions that were filed by Mr. White. It is clear due to Judge Carter continue to interfere with Mr. White right to be present by canceling Mr. White transport order on October 28, 2021 [see V.4; p.496] only days after Mr. White filed his Motion to recuse Judge Carter on October 20, 2021 [see V.3; p.422] The action taking by Judge Carter was never stated in the order of denial [see V.4; p.497] after the motion to recuse was file. The denial was file by Judge Carter on November 9, 2021 without Mr. White being present and this made it impossible for Mr. White to reach the deadline when filing his Accelerated Interlocutory appeal which was denied due to being untimely [see Jason White v. State of Tenn. W2021-014373-cca-T10B-CO]. If Mr. White was given the same opportunity that any other inmate was given by Judge Carter then Mr. White would had have the opportunity to be present to address the court, and to take action when Judge Carter was

addressing the District Attorney on the facts that someone needed to be present in order to file motion to quash Mr. White's subpoena. The 14th Amendment to the United State Constitution provides that everyone shall be treated equal in the eyes of the law, but here it is clear that Judge Carter was the sole person who had full control to keep Mr. White from having the opportunity to be present during his Post-Conviction proceedings. Set out by the United State Supreme Court ruling in McKaskle v. Wiggins, 455 U.S. 168, 174, 104 S.Ct. 944, 79 L. Ed. 2d 122 [1984]" a pro-se defendant must be allowed to control the organization and content of his own defense, to make motion, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and jury at appropriate points in the trial. The appointment of standby counsel does not violate the sixth amendment and the right to proceed pro-se is either respected or denied and not subject to harmless error analysis but requires reversal pro se. Here it was clear that Judge Carter did not respect Mr. White's right to precede pro se even after Mr. White attempted to file extraordinary appeal to challenge the lower Courts denial to be present or to obtain transcripts in order to properly prepare to amend his Petition for post-conviction. Marcus Deangelo Lee v. State NO. W2013-01088-CCA-R3-CD, 2014 Tenn. Crim. App. Lexis 203, 2014 WL 902450, at *3 [Tenn. Rim. App. March 7 2014]. An abuse of discretion occurs when [a] trial court applies an incorrect legal standard or reaches a conclusion that is illogical or unreasonable and causes an injustice to the party complaining. Petitioner shall be entitled to a new post-conviction evidentiary hearing with a different Judge.

[b]. THE RIGHT TO PRESENT RELEVANT WITNESSES AT HIS EVIDENTARY HEARING

Mr. White filed subpoenas on numerous witnesses to be present for his post-conviction hearing; however, during Mr. White's hearing Judge Carter denied Mr. White the right to call Assistant District Attorney Chris Scruggs who prosecuted Mr. White by stating Mr. White did not give a legal compelling answer to why Mr. Scruggs testimony was relevant. Mr. White was allowed to introduce transcript's that were discover by Mr. White pro se that could demonstrate that there was inappropriate relationship

between the presiding Judge and Mr. Scruggs. These transcripts were a part of Mr. White petition for post-conviction due to the fact Mr. White was denied the assistance of counsel during this highly prejudicial ex-parte hearing. [See V.18; Exhibit 13] Even during Attorney Felkner testimony about the transcripts Judge Carter made it clear that Mr. Felkner could not testify to something he was not appointed for. Chris Scruggs testimony was important to establish how Attorney falkner or Attorney Ferguson did not take action to recuse said A.D.A Chris Scruggs or Judge Carter. Judge Carter was also subpoenaed ,However, in the order of denial to recuse Judge Carter he made it clear the he would have the District Attorney Office to quash his subpoena [see v.4;p. 473] and it's clear his testimony was just as materially important to establish the facts that A.D.A Scruggs was allowed to appear before him in an a ex-parte hearing that violated Mr. Whites right to have the assistance of counsel plus how it affective Judge Carter to take judicial notice of Mr. White Constitutional right to have counsel free of conflict during his criminal procedure. This was demonstrated at Mr. White's post-conviction hearing when Attorney Ferguson continue to testify it was the Judge Carter who would not relieve him from his obligation [see v.16; p.161]. Furthermore Judge Carter testimony was materially important to understand how it was possible that the District Attorney Office could be allowed to personally hand picks his court-room and the Judge to preside over a case. This was pointed out in the ex-parte hearing and during arraignment [see v.18; Exhibit 2] also [see v.18; Exhibit 3]. It was also important to ask Judge Carter what he meant when he stated, during this ex-parte hearing that "they could always do the classic surprise" [see v.18; Exhibit 13].This is clearly a procedural due process violation. Furthermore how would it had be possible that Judge Carter signed off on documents that do not reflect the charge's Mr. White was convicted for like the order for pre-sentence report [see v. 18; Exhibit 9] the judgment sheets that was hand written to show count one and two [2] [see v.18 Exhibit 11] to be charge's for conspiracy to promote manuf. meth. Under statue 40-17-433 in order to match all other documents.

This testimony was further important to establish how Attorney Ferguson should have filed motion pre-trial to have Judge Carter recuse.

Mr. White attempt subpoenaed Lead Detective Mark Gaia³ who the State relied on to testify during trial to Mr. White's involvement in the Conspiracy. Judge Carter allowed Mr. White to introduce documentary evidence [see v.18 Exhibit 17, 18, 19] during the post-conviction hearing to establish how Attorney Ferguson was ineffective for failure to investigate into material documents prior to trial in order to impeach Detective Gaia testimony during trial. When Detective Gaia testified That he entered into Ms. Cole's home At 15:40 hr. when in fact Ms. Cole arrest ticket would show she was already arrested at 15:30 [see v.18 Exhibit 18] furthermore this document would also show that Ms. Cole was not in possession of her cell-phone at the time that the text message were sent at 15:38:45, 15:39:28 and 16:27:18⁶ furthermore Detective Gaia testify that Ms. Cole was speaking to a third part over jail calls and the number she was contacting was 901-208-9195 that this number was listed to Kimberly White, Mr. White's Mother [see A.R. V.7 P.68] However during post-conviction Mr. White introduce a cell-phone bill that would show that very number was listed to Michael Underwood [see v.18; Exhibit 19] Detective Gaia's testimony was materially relevant at Mr. White post-conviction to establish how Attorney Ferguson fail to investigate into documents that would had a different outcome

Mr. White attempted to subpoena [see v.18; p.512] Richard DeSaussur² the Shelby County clerk. This witness testimony was materially important to establish that the charges were not entered into the system wrong and how Attorney Ferguson's failure to challenge the Court's Jurisdiction to convict Mr. White to class 'A' felony that carry 15-60 yr.'s or did the District Attorney Office change the charges on the indictment. Mr. White was allowed to introduce his capias [see v.18; Exhibit 3], the order for pre-sentence report[see v.18; Exhibit 9] signed by Judge Carter as well as his judgment sheets [see v. 18

⁶ This text message was proving during trial that it was not sent by Ms. Cole but by Detective Mark Gaia

Exhibit 11] that all shows Mr. White was indicted for conspiracy to promote, manuf. Meth a class 'D' felony under statute 40-17-433. Even during post-conviction the lawyer's continue to testify these were either change or entered incorrect by the Shelby County Clerk Office [see v.13;116-117] It is on the Petitioner to prove factual allegations " by Clear and convincing evidence" Tenn. Code Ann. 40-30-110[f]. Here it is clear by Judge Carter denial of Post-conviction under the fact Mr. White did not have a legal compelling reason to have these witnesses to testify would be abuse of discretion due to the facts Judge Carter could not make a sound finding of fact without Mr. White having the opportunity to present his proof by having a full and fair hear. When State Courts must afford the petitioner a full and fair hearing on his federal claim or else federal rehearing of the facts is required; Stone v. Powell, 428 U.S. 465, 494-95 & n. 37 [1976]. Mr. White has a Constitutional right to establish how his confinement is base unconstitutional due to his Attorney being ineffective for not taking action during his criminal proceedings. This was clearly denied by Judge Carter. Petitioner should be entitled to have a new evidentiary hearing to re-subpoena witnesses in order to establish his proof.

DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE BY FAILING TO PREPARE A STRATEGY BASE DEFENSE?

Attorney Ferguson testified during Post-Conviction that he did not do any kind of investigation due to the facts this was a simple case [see v.15;p. 145] but he did speak with Montez Mullins due to Mr. White informing him [Attorney Ferguson] that Mr. Mullins was fully responsible, and that he had filed a motion to have Mr. Mullins brought in as a witness [see v. 15; p.146] also [see transport order v.18; Exhibit 4] because he would be a good witness [see v. 15;p.146] However, the State was allowed to make Mr. Mullins a co-defendant on April 13, 2017 [see v.18; Exhibit 7] Attorney Ferguson stated that he did not object or file motion once the State made Mr. Mullins a co-defendant [see v.15; p.149-150].

That the State has the right to indict anyone they wish to and that sometimes the constitutional rights are at odds with each other [see v. 15; p.150]. It is clear by Attorney Ferguson's own admission that he had not taken action to procure or secure Mr. Mullins as a defense witness [see v. 15; p.152]. When asked why he did not take action to procure or secure Mr. Mullins as a defense witness, Mr. Ferguson refused to testify to those facts [see v. 15; p.152] set out in *Cooper V. State* 847 S.W. 2d 521 [1992]. Lay's out that "the sixth amendment, when a claim of ineffective assistance of counsel is made, the burden is upon the petitioner to show [1] that counsel's performance was deficient and [2] that, but for the deficiency, there is a reasonable probability that the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L. Ed.2d 674 [1984]." Furthermore, in *Beasley v. United States*, 491 F.2d 687 [6th Cir. 1974], the court stated the following: "[T]he assistance of counsel required under the Sixth Amendment is counsel reasonably likely to render and rendering reasonably effective assistance. It is a violation of this standard for defense counsel to deprive a criminal defendant of a substantial defense by his own ineffectiveness or incompetence... Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting consideration... Defense counsel must investigate all apparently substantial defenses available to the defendant and must assert them in a proper and timely manner." Here it is clear that Attorney Ferguson's ineffectiveness deprived Mr. White of the opportunity to present a witness that would have undermined the State theory that Ms. Cole had sent a text message after the delivery of the package to Mr. White, when in fact Mr. Mullins testified at the post-conviction that it was he who received the text message from Ms. Cole's cell-phone [see v. 15; p.75] but could not say who had sent the text messages. Furthermore Mr. Mullins' testimony would have undermined the State theory of a conspiracy under the facts that Ms. Cole did not know of any illegal content of the package and that Mr. White had nothing to do with the package [see v. 15; p. 73-74]. 491 F.2d at 696 [citation omitted]. In *DeCoster*, the court stated in the following: "In *General Counsel*

should be guided by the American Bar Association standards for the defense of criminal cases. Specifically [1] counsel should confer with his client without delay and often as necessary to elicit matters of defense, or ascertain that potential defense are unavailable. Counsel should discuss fully potential strategies tactical choices with his client. [2] Counsel should advise his client of his right and take all actions necessary to preserve them "... Attorney Ferguson's ineffectiveness deprived Mr. White the right to confront a important witness clearly prejudice Mr. White's defense during trial when the State was allowed to introduce Mr. Mullins out of court statement through Det. Robert Christian in order to attack the only creditability that Mr. White had to challenge the State's case against him, when Det. Christian was allowed to testify in the form of his opinion that Mr. Mullins was not truthful do to Ly word's and swearing was a sign's of deception [see A.R. V. 8 P.231-232]. Due to Attorney Ferguson not having any kind of tactical decision or trial strategy when the State was able to attack Montez Mullins creditability through an out of court statement before the jury left Mr. White defenseless. This further allowed the State to argue during closing arguments that Mr. Mullins was a bold face lie toward no one else knew about the content of the package [see A.R. V. 6 P.43] Set out in Mobley v State, 397 S.W.3d at 81 [quoting Strickland, 466 U.S. at 649] " petitioner must establish that counsel's deficient performance was such a degree that it deprive him of a fair trial and called into the reliability of the outcome." Therefore Mr. White was denied the assistance of counsel set out by his Sixth Amendment United State as well as the Tennessee Constitution Art 1 section 9

**DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO FILE MOTION TO
DISQUALIFY DUE TO A CONFLICT OF INTEREST?**

Mr. White's Mother Kimberly White hired Attorney Ferguson firm to represent her son as testified at post-conviction around September 23, 2016 [see contract v. 18; Exhibit 4]. Mr. white had inform Attorney Ferguson of the fact that he had nothing to do with this crime and that another inmate

name Montez Mullins was responsible for sending the package of meth to Ms. Cole home. [See v. 17; p.11] Attorney Ferguson testified that he had Montez Mullins brought in as a witness [see v. 15; p. 146] also [see v. 18; Exhibit 4]. Attorney Ferguson allowed the State Attorney to make Montez Mullins a co-defendant through re- indictment on April 13, 2017 [see v. 18; Exhibit 7] without no objection or motion to severance, even during the second arraignment it was Attorney Ferguson who was introducing the new indictment against Mr. White [see v.18; Exhibit 7]. Mr. White started to comply to the Board Of Professional Responsibility [see v.18; Exhibit 15, 16] these letter's introduce at post-conviction lays out the fact that Mr. White believed Attorney Ferguson was assisting the Assistant District Attorney against him due to the facts that it was Montez Mullins responsibly and Attorney Ferguson allowed the State to make him a co-defendant without no objection and because of this action Mr. White did not want Attorney Ferguson to continue in representing him even told Attorney Ferguson that he wanted him off is case. When Mr. White ask Attorney Ferguson about this during post-conviction Attorney Ferguson denied that Mr. White wanted him off his case by stating: he did not recall Mr. White wanting him removed from further representing him, because it would had been easy [see v. 16; p. 154] However, Mr. White further introduce transcripts of April 28, 2017 only weeks after Montez Mullins become a co-defendant were Attorney Ferguson inform the Judge that Mr. White wanted him to be remove as his Attorney [see v 18; Exhibit 6]. Set out in Cuyler V. Sullivan 446 U.S. 335 [1980] id 349, In order to establish a violation of the Sixth Amendment, a defendant who raise's no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. Here it became clear during post-conviction that Attorney Ferguson choose to continue to represent Mr. White under the facts that Attorney Ferguson was represent Montez Mullins interest by stating " that Montez Mullins could not be call as a witness [when in fact it was attorney Ferguson who had Montez Mullins brought in as a witness before becoming a co-defendant]" by further stating "once Montez Mullins was charge he had a right to remain silent, so he had a right to remain silent and you have a right to

compulsory process. Those two rights are in conflict with each other and Montez Mullins right to remain silent is superior to Mr. White's right to call a witness." This would show that Attorney Ferguson was representing Mr. Mullins rights to be superior of his own client right, when attorney Ferguson could had sever the case. Attorney Ferguson was not hired to represent Mr. Mullins rights but to give his duty of loyalty to Mr. White rights to the assistance of counsel in order to defend himself. Pursuant to Tenn. Sup. Ct. R.P.C 1.7 "Loyalty to a client is... impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities" however, the evidence during post-conviction would clearly show that Mr. White was being represented by a lawyer with a conflict of interest by representing the State's interest as well as Montez Mullins interest then Mr. White would had the opportunity to present Montez Mullins as a defense witness who clearly testified during post-conviction that he wanted to testify but it was Attorney Ferguson who assist his Attorney as well as Ms. Cole Attorney in not taking the stand to testify [see v.15; p.78-79]. This left the State case unchallenged when the State was allowed to say Mr. Mullins was not being truthful. Attorney Ferguson could not serve two masters, Even during post-conviction Attorney Ferguson attempt to lay blame on the trial Judge for not relieving him of his obligation [see v.16; p.161] Gideon v. Wainwright 372 U.S. 335, 342 [1963] "A lawyer shall not represent a client if the representation of the client may be materially limited by... the lawyer's own interest." When in fact the morning of trial Attorney Ferguson accuse Mr. White of psychically assaulting him, however. During post-conviction Deputy Darius Jones testified that he was working Division 3 court room the morning of July 10, 2017 and there was no evidence of a struggle [see v.16; p. 229].that it was Attorney Ferguson who agreed to continue to represent Mr. White. Due to the conflict cause Mr. White to have to address the Courts own his own behalf during trial [see A.R. V.8 P.199-201] this could also be found in the court of appeals order of denial in Mr. White's direct appeal in "State v. Jason White No.W2018-00329-CCA-R3-CD. " In Glasser v. United States, 315 U.S. 60,92 [1942] that show an example were the record showed that defense

counsel failed to cross-examine a prosecution witness whose testimony linked Glasser with the crime. In the present case counsel failure to secure a defense witness by failing to file a motion to severance or making objection to the State making Montez Mullins a co-defendant due to the facts he had rights that were superior to his own client's rights. When Mr. Mullins was the only person who could have testified to the facts that Mr. White had no knowledge of any drug packages being sent to Ms. Cole home and that he was the person on the receiving end of text message sent from Ms. Cole cell-phone, not Mr. White who the State alleged during trial. Therefore Attorney Ferguson provided ineffective Assistance of counsel by failing to file Motion to recuse himself due to a conflict of interest

**DID TRIAL COUNSEL PROVIDE INEFFECTIVE FOR FAILING TO INVESTIGATE INTO
DOCUMENTARY EVIDENCE?**

Attorney Ferguson testified at post-conviction that he did not do any investigation due to the facts; this was a simple case [see v.15; p.143]. The Sixth Amendment to the United State Constitution states that in "all criminal prosecution, the accused shall enjoy the right to have... to have the assistance of counsel for his defense." Similarly, Article 1, section 9 of the Tennessee Constitution states that "in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel." These provisions guarantee a criminal defendant the right to the effective assistance of counsel. See *Moble v State*, 397 S.W.3d 70, 79 [ten. 2013] [citing *Strickland v. Washington*, 466 U.S. 668, 686 [1984]; *Baxter v. Rose*, 523 S.W. 2d 930, 936[Tenn. 1975]. A "deprivation of the right to effective assistance of counsel present a cognizable claim under the Post-Conviction Procedure Act." *Id* at 79-80 [citing *Pylant v. State*, 263 S.W.3d 854, 868 [Tenn. 2008] [footnote]. Tennessee Code Annotated section 40-30-102 states that "shall be granted when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Petitioner are required to prove their factual allegation "by clear and convincing evidence" Tenn. Code

Ann. 40-30-110[f]. here it was clearly laid out that Mr. White attempted to point out pre-trial that Detective Mark Gaia was not being truthful due to the facts that Detective Gaia did not receive a fed-ex package, but a U.P.S package this evidence was introduce at post-conviction [see v.18; Exhibit 19], furthermore that it would had been impossible that Detective Gaia executed his search warrant into Ms. Cole home at 15:40 has he testified at trial under sworn-oath [see A.R v.7 P.138]. When evidence was introduced at Post-Conviction of Ms. Cole arrest ticket that show that Ms. Cole was already in custody at 15:30 [see v.18; Exhibit 18]. This evidence of Ms. Cole arrest ticket would be irreconcilably contradictory to the fact Ms. Cole could had sent text message at 15:38, 15:39 [see A.R. v.3 Exhibit 31. P. 33 text 813-815] and even during trial it was provided by co-defendant Cole Attorney that Detective Gaia sent the third text message at 16:27. The facts that even during post-conviction Kimberly White also testified that she had inform Attorney Ferguson that the number 901-208-9195 was never listed to Kimberly White but to Michael Underwood [see v.16; p.264] also evidence of this very cell-phone bill was introduce at post-conviction [see v.18;p.17]. The State solely relied on Detective Mark Gaia's testimony during trial to the facts surrounding his investigation, and the facts that he believed Mr. White was involved. There was no other Detective involved in this investigation who would corroborate his testimony. If Attorney Ferguson would had provide Mr. White with the Assistance of Counsel set under the sixth amendment to investigate then there would had a different outcome, "because advocacy is an art and not a science,...[counsel's] strategic choice must be respected" if they were " made after thorough investigation of and facts relevant to plausible option. " Id. At 681, 690, 104 S.Ct. 2052 here it is clear Attorney Ferguson could not have any tactical decision to understand the facts if Attorney only excuse not to investigate due to this case being a " simple case." Here Mr. White lost the opportunity to be heard through counsel who disregarded Mr. White the right to have the assistance to counsel to further an investigation even after Mr. White attempt to bring these issue to Attorney Ferguson pre-trial to investigation. This was also pointed out in Mr. White's letters to the Board OF Professional

Responsibility [see v. 18; Exhibits.15, 16]. In *Beasley v. United State*, 491 F.2d 687 [6TH Cir. 1974] The Court sated the following: " [T]he assistance of counsel required under the Sixth Amendment is counsel reasonably likely to render and rendering reasonably effective assistance. It is a violation of this standard for defense counsel to deprive a criminal defendant of substantial defense by his own ineffectiveness or incompetence.... Defense counsel must perform at least as well as a lawyer with ordinary training of skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations... defense counsel must investigate all apparently substantial defense available to the defendant and must assert them in a proper and timely manner." Due to Attorney Ferguson deficient performance allow the State key witness testimony to go essentially un rebutted and untested, was clearly prejudice toward Mr. White defense⁷.

DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO OBJECT TO

INADMISSIBLE EVIDENCE AT TRIAL?

During trial Attorney Ferguson allowed the State to introduce inadmissible evidence at trial, when the State introduced cell phone data that was found during a search of Ms. Cole home. This was the key evidence testified by Detective Mark Gaia the State key witness against Mr. White, in order to establish that Mr. White had knowledge of the delivery of the package of Meth, because Dustin White Mr. Whites brother had shown up during the search with the same number in his phone that was in Ms. Cole phone that the text was sent to, However, Dustin White was never a State witness or arrested. During trial through cross-examination by Ms. Cole Attorney it was proving that it was not Ms. Cole

⁷ If this Court finds it impossible to determine the facts of this issue due to Detective Gaia not being present at the post-conviction hearing would show how Judge Carter abuse his discretion as pointed out in the second issue in this brief for not directing the sheriff department to issue Mr. White's subpoena as pointed out in the first footnote there Det. Gaia now work at FedEx.

would had sent the third text message from Ms. Cole cell-phone [see A.R.V. 7 p. 140-141] but Detective Mark Gaia. Under the Sixth Amendment, when a claim of ineffective assistance of counsel is made, the burden is upon the petitioner to show [1] that counsel's performance was deficient and [2] that, but for the deficiency, there is a reasonable probability that the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 Ct... 2052, 2064, 80 Led. 2d 674 [1084]. Attorney Ferguson testified that Mr. White had no standing to had challenge evidence in co- defendant Cole cell-phone and that T.C.A 40-6-110 did not apply to this situation [see v. 15; p. 124]. ,However, under that vary State statue 40-6-110[B] "No law enforcement officer shall search, examine, extract or duplicate any cellular telephone data, even if incident to a lawful arrest," unless: [1] "The officer has obtained a search warrant issued pursuant to this part or Rule 41 of the Tennessee Rules of Criminal Procedure"; [2] "The owner of the cellular telephone or the person in possession of the cellular telephone at the time it is seized gives the officer informed consent for the officer to search the cellular telephone"; or [3] "Exigent circumstances exit at the time of the seizure requiring the officer to search the cellular telephone". Attorney Ferguson action to allow this evidence to go without no objection was clearly prejudice toward Mr. White defense when this was the States key evidence against Mr. White in order to say Mr. white had knowledge of the package, due to the facts that there were picture's found in Ms. Cole cell phone that was testified by Detective Gaia to be Mr. White, if Attorney Ferguson would had objected to the State introduction of this evidence that was obtain in violation of State Law under T.C.A 40-6-110 [c] that states;" No cellular telephone data that is obtained in violation of this section may be used in any court of law or administrative board as evidence in any such proceeding.", then there would had been no evidence to be introduce toward Mr. White. The action taking by Attorney Ferguson clearly was deficient and because of the deficiency there would be a different outcome of Mr. White's trial.

DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO CHALLENGE THE

COURTS JURISDICTION TO CONVICT?

Attorney Ferguson was hired by Mr. White's Mother Kimberly White to represent Mr. White under indictment number 16-02794 [see contract v.18; exhibit 4] that read two [2] counts for conspiracy to promote the manuf. Meth. Attorney Ferguson further testified during post-conviction that these charge were inter into the system incorrect [see v. 15;p. 116-117]. In Baxter v. Rose, 523 S.W.2d 930 [Tenn.1975] our Supreme Court decided that attorneys should be held to the general standard of whether the service rendered were within the range of competence demanded of attorneys in criminal cases. 523, S.W.2d at 936. Further, the Courts stated that the range of competence was to measure by the duties and criteria set forth in Beasley v. United State, 491 F. 2d 687 [6th Cir. 1974] [citing Cooper v. State]. Here attorney Ferguson render ineffective assistance of counsel by stating this was inter incorrect. However the only record of arrest was a capias that was issue by the Shelby County Clark Office on April 22, 2016 who witness to a true bill indictment on April 21, 2016 only one day after the indictment was issued [see v. Exhibit 3]. This allowed the Courts to convict Mr. White to a class "A" Felony that carried 15-60 yr.'s. Furthermore it allowed the courts to sentence Mr. White to a carrier felony to 60 yr's.at 100%. Attorney Ferguson did not represent Mr. White during sentence However due to attorney Ferguson lack to take action to challenge the fact that Mr. White was not indicted for the very charges that he was convicted for prejudice Mr. White in understanding the charges against him, Even in Mr. White order for his pre-sentence report sign by Judge Carter that states Mr. White was convicted for the conspir. Promote manuf. Meth [see v.18; Exhibit 9] also Mr. White Judgment sheets that shows someone hand wrote the same charges that show he was indicted for, conspire. Promote manuf. Meth [see v.18; Exhibit 11]. These charges would need a different set of evidence to prove the State case under State statue 40-17-433. Furthermore, Attorney Ferguson testified that a capias was not

a warrant [see v.15; p. 142], However, it gives the police officer the authority to arrest [see v. 15; p. 143] In order for the Shelby County Clerk's office to issue a warrant of arrest as set forth under T.C.A 40-6-203 [a] "Upon information made to any magistrate of the commission of public offense, the magistrate shall examine, on oath, the affiant or affiants, reduce the examination to writing, and cause the examination to be signed by the person making it." This was done in the capias that was issue and introduce by Mr. White during post-conviction [see v. 18; Exhibit 3] As pointed out under T.C.A 40-6-214 "Clerks of courts of general session and their duly sworn deputies have jurisdiction and authority, concurrent with that of the Judges of the general sessions court, to issue warrants for the arrest of person." It is clear of why Attorney Ferguson should had taking action to protect Mr. Whites Constitutional Right by challenging the court's jurisdiction due to the facts a person can only be taking to trial through a presentment or indictment by a grand jury set out by State and Federal Constitution. Attorney Ferguson disregard to these vey facts by saying these charges were inter incorrect clearly shows how his deficiency deprived Mr. White the assistance of counsel and prejudice Mr. Whites procedure due process.

DID TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE FOR FAILING TO FILE MOTION TO DISQUALIFY:

[a]. JUDGE CARTER DUE TO JUDICIAL MISCONDUCT?

Attorney Ferguson and Attorney Felkner both failed to file a motion to disqualify or argue per-trial that Judge Carter should had recuse himself due to judicial misconduct that clearly demonstrated judicial bias. Attorney Ferguson ineffectiveness denied Mr. White substantial right to have his case heard by an unbiased decision maker. Mr. White introduce transcripts during post-conviction of a highly ex-parte hearing that took place on May 16, 2016 [see v. 18; Exhibit 13]only weeks before Mr. White was brought in for arraignment before Judge Carter. The transcripts of this ex-parte hearing could had

been discover due to the arraignment transcripts that was introduce during post-conviction through Attorney Felkner testimony [see v. 18; Exhibit 2 p.3]. The transcript clearly shows that Mr. White was not on Judge Carter docket and Assistant District Attorney Chris Scruggs had to remind Judge Carter of the May 16, 2016 ex-parte hearing. Attorney Felkner also testified that he was not inform of this hearing [see v.15; p. 100-101] and that he was not appoint until June the 2nd the morning of arraignment, [this could also be found in v. 18; Exhibit 2 p.5]. Cooper v. State 847 S.W. 2d 521 [1992] points out that Under the Sixth Amendment , when a claim of ineffective assistance of counsel is made, the burden is upon the petitioner to show [1] that counsel's performance was deficient and [2] that, but for the deficiency , there is a reasonable probability that the result would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L. Ed. 2d 674 [1984]. This standard has been applied, as well, to the right to counsel under the article 1, section 9 of the Tennessee Constitution. State v. Melson, 772 S.W. 2d 417 n. 2 [1989] Here it is clear by the post-conviction hearing that Judge Carter held an ex-parte hearing on May 16, 2016 that show Judge Carter disregard Mr. White Constitutional right to have the assistance of counsel during this hearing, furthermore during this ex-parte hearing Judge Carter demonstrated prejudice as well as bias toward Mr. White. When Judge Carter did not stop this conversation but continue it by stating;

THE COURT: Is the shipper not involved I this?

Mr. Scruggs: We do not know who the shipper is.

THE COURT: Amazon. Com I guess. Everything else—

Mr. Scruggs: I think it'd be fun to find —

THE COURT:-- everything else is available. I guess they always do the classic surprise—you—

[See v. 18; Exhibit 13 p.4]

The Judge did not stop there but continue to initiate this kind of ex-parte communication in violation of the code of judicial conduct with the assistant District Attorney by asking Mr. Scruggs;

THE COURT: What's he doing time for?

Mr. Scruggs: Especially agg. kidnapping, especially agg robbery. He's apparently a ranking member-

THE COURT: Got a quit—got quit of a resume.

[see v. 18; Exhibit 13 p. 5]

Due to Attorney Ferguson or felkner allowing this action to go unchallenged denied Mr. White with a substantial right that clearly affect the whole criminal procedure due to the facts that a Judge has full discretion to oversee a trial and to see witness face to face and that the appeal courts will not second guess the trial court decision. It could be proving during Mr. White criminal proceeding that Judge Carter had no regard to Mr. White's right to have the assistance of counsel free of conflict when attorney Ferguson stated during post-conviction that it was Judge Carter that would not relieve him of his obligation [see v. 16; p. 158-159]. When by the record it was clear that Mr. White was trying to remove his retain Attorney. Due to attorney deficiency, prejudice Mr. White .the opportunity to be heard as point out in Art, 1 Section 9 of the Tennessee Constitution further being denied the assistance of counsel⁸

[b.] ASSISTANT DISTRICT ATTORNEY, DUE TO PROSECUTION MISCONDUCT?

Attorney Ferguson and Attorney Felkner both failed to file motion to disqualify Assistant District Attorney Chris Scruggs due to prosecution misconduct, when assistant District Attorney appear before

⁸ If this court cannot determine these facts due to Judge Carter not being called as a witness, would show how Judge Carter abused its discretion by failure to recuse himself point out in the first issue in this brief, and the second issue [b] that would show Judge Carter abuse its discretion in denying Mr. White a full and fair hearing

Judge Carter through an ex- parte conversation in order to use the fact he needed a transport order, this should had be done through the clerk's office. However A.D.A. Chris Scruggs clearly needed an advantage to present the State case before the courts when the transcripts that was introduce during post-conviction clearly show that A.D.A. Scruggs stated;

MR. SCRUGGS: okay, I think the courts will enjoy the facts on this case. I've never seen anything like it.

The court: conspiracy and in a drug free school zone.

MR. SCRUGGS: Allegedly Mr. White ordered half a kilo of methamphetamine from another inmate in California who arranged to have it shipped FedEx to his fiancé's house in Bartlett, AND OF course, it was unaccepted.

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

The Court: updates, huh?

[see v. 18 Exhibit 13 p.4]

This ex-parte hearing did not stop there but continue by A.D.A. Scruggs further stating;

MR. SCRUGGS: HE'S A ranking member of the Vice Lord in prison.

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

[see v. 18; Exhibit 13 p. 5]

This prosecution misconduct violated Mr. White substantial right by [1] not having the assistance of counsel during this conversation [2] denied Mr. White the opportunity to defend himself due to the

facts that it was not Mr. White who had the package sent to Ms. Cole home but Montez Mullins, also the facts it was not Mr. White who was calling Ms. Cole Cell phone during the search. [3] This was clearly highly prejudiced toward Mr. White when the A.D.A. was allowed to give his opinion of Mr. White being a high ranking member of the Vice Lord in the prison system.[4] This also allowed the A.D.A to introduce a different indictment other than the one the county clerk witness to due to the charges were different as stated in the capias to be conspiracy to promote manuf. Meth. Statue T.C.A 40-17-433 [see v. 18; Exhibit 3]. This was issued on April 22, 2016 only one day after the indictment was issued on April 21, 2016. Attorney Ferguson and felkner both fail to challenge this pre-trial denied Mr. White the assistance of counsel during a critical stage of the criminal procedure. The action taking by A.D.A Chris Scruggs was clearly to mislead Judge Carter during this Ex-parte hearing in order to have Mr. White personally brought before Judge Carter Court room to be arraign for a class "A" Felony when it is clear that Mr. White was not appoint to Judge Carter court-room [see v.18; exhibit 2 p.3] THE Attorney should had file motion to disqualify A.D.A Scruggs from using Judge Carter Court-room to further his conviction⁹.

DID TRIAL COUNSEL CUMULATIVE ERRORS CAUSED PREJUDICE?

Even if any or all of the errors described above were harmless on their own, the cumulative effect of the errors undermines confidence in the fairness of the proceedings. Had trial counsel not committed the several errors described above, it is reasonable that the outcome would have been different. "[T]here may be multiple errors committed in a trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant's right to a fair trial." State v. Hester, 324 S.W 3d 1, 76 [Tenn. 2010]. Here the cumulative effect of trial counsel's errors ensured

⁹ If this court cannot reach a conclusion on the ex- parte transcripts [see V. 18 Exhibit 13]. Then its clear by the record that Judge Carter abuse its discretion to allow Mr. White to call Assistant District Attorney as a witness

that Mr. White would be conviction. First, trial counsel, abandon Mr. White's only opportunity to confront a important witness by allowing the State to make him a co-defendant to discredit the very statement that could had been use to prove Mr. White had no Knowledge of the package that was sent to Ms. Cole home, furthermore by failing to investigate into impeaching documents to establish that lead Detective was not being truthful about the evidence leaving the state case to go unchallenged further, allowing the prosecution and Judge Carter to continue to preside over the trial. Trial counsel denied Mr. White the opportunity to be represented by counsel free of conflict by failing to file motion to disqualify. Trial counsel allowed inadmissible evidence to go unchallenged when the State key witness testified that he planted text message in Ms. Cole cell-phone, this was the heart of the State case. Trial counsel had no strategy in order to provided Mr. White the proper assistance of counsel. The cumulative effect of these errors undermines confidence in the verdict. Had trial counsel provided assistance of counsel point out under State and Federal Constitution Mr. White would have been acquitted.

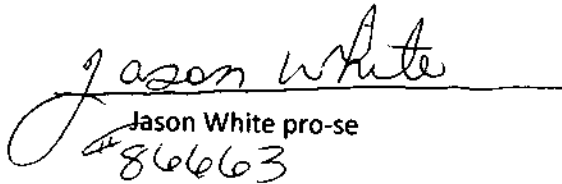
CONCLUISON

Mr. White trial counsel failed to provide Mr. White with objectively reasonable assistance. Trial counsel's errors were numerous. The individual and cumulative impact of these errors caused Mr. White conviction. Trial counsel's failures constitute a violation of Mr. White Constitutional right to effective assistance of counsel free of conflict. Mr. White conviction is therefore void and he is entitled to relief under the Post-Conviction Procedure Act.

Wherefore premises considered, Mr. White humbly requests that this court vacate his conviction in this matter and remand his case to trial court for a new trial.

If this court cannot determine the facts pointed out in this brief due to the witnesses not being present, or the facts that have been point out by Mr. White due to the lower courts abuse of discretion then Mr. White respectful ask this court to remand this case back to the lower courts for a new post-conviction before a different Judge..

Respectfully submitted this the 27th day of March 2023


Jason White pro-se
#86663

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CERTIFICATE OF SERVICE

I, THE UNDERSIGNED HEREBY CERTIFY THAT I have mailed a true exact copy of this foregoing with the Court of Criminal Appeals of Jackson Tennessee, provided that a true and exact copy to the names listed below.

ANDREW COULAM

OFFICE OF TENNESSEE.

ATTORNEY GENERAL