

July 17, 2023.

To the Conviction Review Unit,

My name is Kristina Cole and I was found guilty by a jury on July 14, 2017 for 2 counts of conspiracy unlawful possession of methamphetamine in a Drug Free Zone and 2 counts of Possession of Methamphetamine with Intent to sell in a Drug Free Zone. I am requesting a review of my conviction due to violation of my 4th Amendment Right, prosecutorial misconduct, fabricated/ planted evidence with false testimony, and unjust procedures by the higher officials in this case, now retired Judge Robert Carter Jr., former ADA Chris Scruggs, and former Detective Mark Gaia of the Bartlett Police Department. I assert that I was used as a unwilling pawn by the above mentioned officials in my case to further prosecution against my co-defendant, Jason White. As a result of judicial and biased misconduct on the part of said officials, I was wrongfully convicted and sentenced to 13.5 years at 100% due to enhancement of a Drug Zone Violation. However on April 25, 2023 I was granted parole due to clemency by Gov. Lee concerning a newly passed Drug Zone Act but I still have eight years left on parole until January 2031.

According to an Affidavit of Complaint initiated by former Detective Mark Gaia of the Bartlett Police Department(see attached Affidavit, Appendix p. 6), Gaia asserted that Detective Adam Collins with the Visalia Police Department in Visalia, CA advised a FedEx package which contained approximately one pound of methamphetamine had a delivery address of 2552 Jenwood Street, Memphis TN 38134. On February 3, 2016, after the package arrived at the Bartlett Police Department, Detective Gaia and other members of the Bartlett Police Department conducted a controlled delivery to my then residence of 2552 Jenwood St, Bartlett TN 38134. Attorney Michael Scholl cross-examined Gaia during my Motion to Suppress hearing where Detective Gaia admitted to convincing the judicial commissioner to conduct a controlled delivery of 2552 Jenwood St. However, Detective Gaia was called to do a controlled delivery at 2552 Linwood Street in Bartlett, TN not Memphis, TN and that these facts were not told to the commissioner who signed off on the warrant. (See pg. 40-41 of Motion to Suppress Transcripts, Appendix p.7-8). I have documented proof that the designated address for the FedEx package was to Bailey Green, 2252

Linwood St, Memphis Tn. 38134 (See Original Shipping Label, Appendix p.9). I assert that Detective Gaia falsely gave testament of the address for this package in order to illegally obtain a search warrant to enter my residence. Detective Gaia then gave false testimony that the package was sent by FedEx to my address when the repackaged box was shipped via UPS to him at the Bartlett Police Department (see attached UPS Shipping Label, Appendix p. 10). This action was a direct violation of my 4th Amendment Right for protection from unreasonable search and seizure as the package was not addressed to me nor my address of 2552 Jenwood St but to Bailey Green of 2552 Linwood St.

Detective Gaia testified that upon searching my computer, he located the FedEx tracking #808857073374 indicating I was checking the deliver status of the package in anticipation of its arrival. However, the package of drugs was never shipped FedEx according to Detective Collins who repackaged and then reshipped the FedEx package via UPS using tracking #J451 270 4571. (see Narrative from Detective Collins to Detective Gaia, Appendix p. 11-12, and also see UPS shipping label addressed to Detective Gaia from Detective Collins, Appendix p. 10). Gaia stated I was tracking the package but it would be technically against logic that I was capable of tracking the package as it was a dead air bill. Private Investigator Dana Young Jungclaus of Discovery Groups, LLC out of Scottsdale, AZ who investigated the original shipping of the package mailed by Detective Adam Collins from Visalia, CA on 2/2/2016 to Detective Mark Gaia at the Bartlett Police Department stated the package was not shipped with its FedEx Air Bill 8088 5707 3374 but repackaged and mailed using UPS as a shipper. I assert that proper procedures were not followed in the chain of custody of said package. Neither was Detective Adam Collins interviewed or subpoenaed as a state or defense witness which even he admitted was unusual for chain of custody and his part in the beginning investigation.(see attached letter from PI Jungclaus, Appendix p.13-14).

There was no other corroborating testimony given by anyone at trial other than Detective Gaia whose disregard of the truth during this investigation is evident in three significant actions. First, he continued to commit perjury by further stating that I sent text messages from my phone after I was arrested. Gaia falsely alleged at trial that I had sent texts from my phone but I witnessed him texting from my phone after I was arrested in handcuffs. It is clear by my arrest ticket that I was arrested at 15:30 (3:30) However, a printout of my text messages submitted at my trial show that the texts were sent at 15:38, 15:39, and the last

text at 16:27. My trial attorney Kortney Simmons compelled Detective Gaia to admit under oath that he did in fact send a text message from my phone after I was arrested and in handcuffs. Simmons also noted a 3+ minute conversation maintained on my cell phone after I was arrested that I witnessed by Detective Gaia who denied knowledge and access to my phone at the time. (See attached Text/Phone Calls for 2-3-2016, Appendix p. 15). I witnessed Detective Gaia answer my cell phone and talk aggressively to the caller for over 3 minutes yet deny on the stand that said conversation occurred. Montez Mullins, my second co-defendant, made a statement through Detective Christian's inquiry that he was the caller and that he and Detective Gaia engaged in an argumentative conversation at the time noted for the 3+ min conversation my then attorney, Kortney Simmons, attested to during cross examination of Detective Gaia at my trial. (See attached Interview by Det. Mike Christian , Appendix p. 16-24). Also, Detective Gaia testified that I was in Jail East contacting the number 901-208-9195 and this number was listed to Kimberly White when in fact there is documented evidence of 901-208-9195 to be listed as Michael Underwood. (See phone bill, Appendix p. 25-26). Secondly, a search warrant was granted on February 4, 2016 but Detective Gaia assessed my phones on February 3, 2016 before he had authority to do so (See pg. 28 Transcript of Opening Statement, Appendix p. 27). Detective Mark Gaia had no authorization to examine, extract, or duplicate any data from my cellphone nor did he have my consent to do so. I witnessed Detective Gaia sending text messages from my cellphone. His actions were clearly proven to be deceitful by obtaining a search warrant for that very cellphone on February 4, 2016 as if he had not had already planted evidence on my phone on February 3, 2016. Third, the computer that Detective Gaia stated contained the tracking number 8088 5707 3374 for the FedEx package was not submitted at trial but instead only a picture of a computer screen was submitted (see Computer Screen Picture, Appendix p. 28). I attest there is no way to prove conclusively that said computer belonged to me or that the browsing history for the FedEx package was done on my computer as Gaia testified since the computer was not made available for time stamp notification of said tracking. Gaia stated that to get to the browsing history, "Open the Internet, and I believe it was an icon on the top right corner that you have for Internet Options, and you click on it and you go to browser history. And then there's a -- a small search icon that looks like an hour glass, and I type the letter F. And when I typed the letter F, that's when everything came up" (see Transcript of Closing Arguments pg. 48, Appendix p. 29). As evident by the photo, this was not the procedure utilized as entries not beginning with the letter F are shown on the picture.

I attest that former Judge Robert Carter, Jr. and former ADA Chris Scruggs participated in an ex-parte communication to which neither I nor my attorney were made privy to. This clearly shows prosecutorial and judicial misconduct on the part of the judge and DA as according to Judge Carter, my name was not on his docket. ADA Chris Scruggs utilized this pretense meeting of obtaining a transfer order for my co-defendant, Jason White, as a means for conducting this conversation in secret violating my and my co-defendants as well as our attorneys' right to be present. According to Tennessee Code, a judge must remain unbiased or unprejudiced in procedures of the court which is clearly violated by evidence in the transcripts of this communication when ADA Scruggs stated "I think the Court will enjoy the facts on this case. I've never seen anything quite like it" to which Judge Carter replied "Conspiracy and in a drug free school zone". Carter also stated "I guess they could always do the classic surprise -- " (See Ex-Parte Conversation/Transfer Order Transcript, Appendix p. 30-36) Further discussion clearly showed the interest and target of this investigation was not me but my co-defendant, Jason White, as his past charges were referenced as well as alleged affiliations as a "high ranking Vice Lord". Transcripts from this conversation clearly show it was highly prejudiced. During trial ADA Scruggs was allowed to introduce Mullins out of court confession through Detective Christian to prove it as not being truthful due to use of "Iy" words and "I swear to God". It was a clear violation of my right to confrontation because I wasn't given the right to confront Mullins as my accuser. ADA Scruggs set out to undermine the credibility of both me and my co-defendants by attacking the validity of Montez Mullins' statement. While recognized as a common approach, to question our credibility is highly hypocritical when the very detective who arrested me has admitted on stand to tampering with evidence in the way of assessing my phone without a search warrant, sending texts from same phone, and engaging in a conversation on said phone which I witnessed.

I did inform my attorney of Mullins actions that led to a package coming to my then address. Mullins did come forward and gave a statement to my attorney before we had our first conversation and also prior to being made a co-defendant (See McDaniel's Response to Board of Professional Responsibility, Appendix p. 37). I had no knowledge of what the package contained and I didn't open it. ADA Scruggs stated that Montez seemingly popped up out of nowhere as Jason, my co-defendant, "put Tez's name in the mix but until February 22, 2016, I didn't know who Tez was" (See pg. 39 Transcripts of Closing Statements, Appendix p.

38). Without the judicial and prosecutorial misconduct and police officer misconduct by lead investigator Mark Gaia in the case I would never have been convicted. The prosecution submitted over four years of phone records in the hopes of discrediting me and my relationship with my co-defendant, Jason White. In closing arguments to further discredit my innocence, Scruggs made comments referring to Jason and I as "Bonnie and Clyde" (See pg. 44 Transcripts of Closing Statements, Appendix p. 39). He made assumptions of my guilt because I utilized my constitutional right not to testify by saying, "And it's not just Ms. Cole's accepting the package. And while I'm on that, which witness came up here and stood before the judge, swore to tell the truth, submitted himself to direct examination either by them or by me, the questions by anybody, that said Ms. Cole is ignorant, said that Ms. Cole don't know what's in that box" (See pg. 68 Transcripts of Closing Statement, Appendix p. 40). Scruggs then made defamatory accusations that "if you look at it she looks like a bookkeeper for the Junk Yard Dogs" (See pg. 70 Transcripts of Closing Statements, Appendix p. 41).

In summary, I believe I was wrongfully convicted and sentenced to 13.5 years at 100%. I am actually innocent of the crimes I have been convicted of and had it not been for the new Drug Free Zone Act that was recently passed and the clemency of Governor Lee, I would still be incarcerated. Even though I am no longer in prison, I still have to face the complications associated with parole and fees for the next eight years. My family has been traumatized by my wrongful incarceration and I assert that if not for the judicial and prosecutorial misconduct of Judge Robert Carter, Jr, ADA Scruggs, and Detective Mark Gaia, I would not have been found guilty. State officials are held to a higher standard than a mere civilian. As such, they should be held to a higher accountability when misconduct occurs especially if said misconduct unjustly influences a jury's decision of guilt or innocence towards a petitioner. I thank you for accepting this application for conviction review. I sincerely hope that you will acknowledge the wrongs done in my case that justice will prevail.

Thank you, Kristina Cole