

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

June 25, 2015

To: Ms. Rebecca Boone, GDC1179455, Arrendale State Prison, Post Office Box 709, Alto, Georgia 30510

Docket Number: A15A1884

Style: Rebecca Boone v. The State

Your document(s) is (are) being returned for the following reason(s).

1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**
2. A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. **An improper Certificate of Service accompanied your document(s). Rule 6**
5. **You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service. The judges of the Court of Appeals of Georgia or the Clerk of the Court of Appeals of Georgia should not be listed on your Certificate of Service**
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
8. Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9. Letter briefs and letter cites are not permitted. Rule 27 (b)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12. Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13. The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14. Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15. Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17. The Motion to Supplement has not been granted.
18. **Other: It is not necessary to have your documents witnessed or notarized. I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.**

For Additional information, please go to the Court's website at: www.gaappeals.us

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: Rebecca Boone
Docket Number: AISA 1884

Style: Rebecca Boone v. The State

Your document(s) is (are) being returned for the following reason(s).

1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA §5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**
2. A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
5. Your Certificate of Service did not include the complete name and mailing address of each opposing counsel and pro se party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
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17. The Motion to Supplement has not been granted.

18. Other: It is not necessary to have your documents notarized.
Also you must mail a copy of your documents to the opposing counsel.

For Additional information, please go to the Court's website at: www.gaappeals.us

To Judges of Georgia Court of Appeals
47 Trinity Avenue
Atlanta, GA

FILED IN OFFICE

JUN 22 2015

COURT CLERK
CLERK COURT OF APPEALS OF GA

RECEIVED IN OFFICE
2015 JUN 24 PM 3:17
LENA/ COURT CLERK/ CLERK
COURT OF APPEALS OF GA

Fr Rebecca Boone #1179455

Arrendale State Prison

P.O. B 709

Alto, GA 30510

Re: Evidence documents A - B - C - D submitted
with this enumeration of errors.

June 19, 2015

Dear Judges,

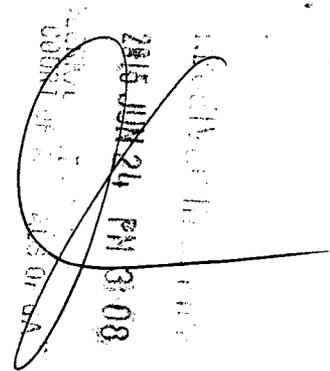
I do not believe I am required to send a copy of this enumeration to your office in addition to the original I am sending to your Clerk's Office but I am trying to ensure that this document arrives at your office. I only had 2 copies each of the above documents A - B - C - D so I submitted a set of them to Cherokee Co. ADA Cliff Head and the other copy to your Clerk with the original of this enumeration of errors and those documents can be referred to there as needed.

cc to file

Rebecca Boone

To Stephen E. Castlen, Clerk
Georgia Court of Appeals
47 Trinity Avenue Suite 501
Atlanta, Ga. 30334

Fr: Rebecca Boone #1179455
Arrendale State Prison
PO Box 709
Alto, Ga. 30510



Re: Enumeration of Errors to the foregoing appeal
case # A15A1884.

June 19, 2015

Dear Mr. Castlen

Enclosed is the Enumeration of Errors to the above appeal
and a Certificate of Service regarding the document.
Copy to Cherokee Co. District Attorney's Office and to the
Judges of the Georgia Court of Appeals that I would like
filed with my case in your office. Thank You

Rebecca Boone

c.c. to file

DECLARATION OF SERVICE

2015 JUN 24 PM 3:08

On Monday, 06/15/15, I Rebecca Boone, spoke to Ms. Wilbanks, the only notary available to prisoners of Arrandale State Prison. I told her I would need legal papers notarized on Friday, 06/19/15, because Fridays are the only day of the week prison officials will notarize documents for prisoners.

On Friday, 06/19/15, when I asked officers to allow me to take the enclosed Enumeration of Errors and Certificate of Service to Ms. Wilbanks's office to have them notarized I was told Ms. Wilbanks could not notarize my papers today and it would be next Friday before she would notarize them.

As a prisoner I have no access to a proper U.S. mailbox. On this day, Friday 06/19/15, I am handing 3 manilla envelopes containing the above described enumeration of errors to G.D.O.C. c/o Poutney to mail for me with adequate postage thereon.

I have no further power to ensure these documents are forwarded to the Cherokee Co. D.A.'s Office and the Ga. Court of Appeals in time.

Please subpoena G.D.O.C. c/o Poutney to testify to the above facts should that be necessary.

COPY TO FILE - ADA HEAD - JUDGES/CLERK GA. APP. CT.

Rebecca Boone

Date 06/19/15

Pro Se GDC# 1179455
Arrandale State Prison
POB 709
Atto, Ga 30510

Witness Aretha Williams
Witness Carol Sue Robinson D-B-4

CERTIFICATE OF SERVICE

I Rebecca Boone defendant herein, pro se, do hereby certify that I have on this day, served a true and correct copy of the Enumeration of Errors of the foregoing appeal case # A15A1884 by placing same in the U.S. Mail with adequate postage prepaid thereon and addressed to:

Cherokee Co. ~~D~~ Ass't Dist. Atty Cliff Head
90 North Street Suite 390
Canton, Georgia, 30114

Judges of the Georgia Court of Appeals
47 Trinity Avenue
Atlanta, Georgia, 30334

Clerk of Georgia Court of Appeals
47 Trinity Avenue
Atlanta, Georgia, 30334

Pro Se GDC # 1179455
Arrendale State Prison
PO Box 709
Alto, Georgia 30510

Sworn and subscribed before me this 19th day of June, 2015
Notary Public

TABLE OF CASE LAW

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- 5 - AAA. Hwy Express Inn v Hagler 72 Ga App 519,
278 SE2d 462 (1945)
- 49, 32 - Adams v Wainwright 709 F2d 11th Cir (1983)
- 26 - Aron v U.S. 291 F3d 708, 714-15 11th Cir (2012)
- 28 - Birt v State 256 Ga. 483, 350 SE2d 241 (1986)
- 41 - Blackledge v Allison ~~431~~ 431 U.S. 63 1977
- 43 - Blake v Zant 513 F Supp 706 772 S.D. GA. (1981)
- 36 - Boone v State 282 Ga. App 67, 637 SE2d 795 (2006)
- 29 - Bradley v State 292 Ga 607 740 SE 2d 100 (2013)
- 26 - Canady v U.S. LEXIS 140293 Oct (2014)
- 28 - Coperton v AT Massey Coal Co U.S. 129 S.Ct
2252, 2266, 173 LEd 2d 1208 (2009)
- 19, 29 - Cochran v State 315 Ga. App. (2012)
- 8, 35 - Code v Montgomery 799 F2d 1481-84 11th Cir (1986)
- 13 - Coleman v Thompson 501 U.S. 722, 750, 115 LEd 2d 640 (1991)
- 14 - Daniels v Williams 474 US 327 88 LEd 2d 662
- 26 - Darden v Wainwright 477 U.S. 168, 91 LEd 2d 144 (1986)
- 27 - Davenport v State 157 Ga. App (1981)
- 5 - D.O.T v Delta Mac Prods Co 157 Ga App 423, 278 SE2d 73 (1981)
- 44 - Dowling v State 294 Ga App 413 Oct (2008)
- 19, 29 - Ferrell v Hall 640 F3d 1199 (2011)
- 41 - Finch v Vaughn 67 F3d 909 Oct 31, (1995)
- 31 - Garcia-Duran v U.S. US Dist LEXIS 58847 (2013)
- 40 - Garland v State 283 Ga 657 SE2d 842 (2008)
- 28 - Gillis v City of Waycross 247 Ga App 119, 122,
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- 31 - Godfrey v McDonough US Dist LEXIS 25079 (2007)
- 8, 35 - Gomez v Beto 462 F2d 596 597 5th Cir (1972)
- 36 - Green v Nelson 595 F3d 1245, 1278-52 11th Cir (2010)
- 10 - Harris v State 278 Ga. 280, 600 SE2d 592 (2004)
- 4 - Heath v State 268 Ga. App 235, 601 SE2d 758 (2004)
- 8, 34 - Hill v Lockhart 474 US 52 59-60 88 LEd 2d 203 (1985)
- 14 - Holcomb v Gray 234 Ga 7, 214 SE 2d 512
- 38 - Holsey v State 271 Ga 856, 860, 524 SE2d ~~43~~473 (1999)
- 13 - Hudson v Whitley 979 F2d 1058
- 29 - Ingram v State 279 Ga 132, 610 SE2d 21 (2005)
- 6 - Johnson v Zerbst 304 US 458, 464, 58 S.Ct 1019
82 LEd 146 (1938)
- 11 - King v Bell 378 F3d 550, 553, 554 6th Cir (2004)
- 28 - King v State 246 Ga. 386 Sept (1980)
- 14 - Leslie v Williams 235 Ga App 657 150 SE2d 130 (1998)
- 39 - Lynd v State 262 Ga 58 (1992)
- 16 - Malloy v Hogan 378 US 1 84 S.Ct 1489 12 LEd2d 653 164
- 42 - Maples v Thomas 181 LEd2d 807 U.S.
- 27 - Merritt v State 254 Ga App (2002)
- 40 - Marshall v Lonberger 459 US 422 (1983)
- 41 - Martin 760 F2d at 1247
- 16, 27 - Mendenhall v Hopper 453 FSupp 977 S.D. GA 1978
aff'd 591 F2d 1342 5th Cir (1979)
- 32, 44 - Miles v Martel 696 F3d 889 (2012)
 - Missouri v Frye US 132 S.Ct 1399, 182 LEd2d 379 (2012)
 - Moran v Clark 296 F3d 638 (2001)
 - Murray v Carrier 477 US 478, 488, 91 LEd 2d 397 (1986)

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- 41, 43 - *McBryan v McElroy* 510 FSupp 706, 712 n2 (N.D.Ga.) 1981
- 21 - *McKinney v Pate* 20 F3d 1550 11th Cir (1994)
- 26 - *McLaughlin v Payne* LEXIS 588 GALEXIS 588 (2014)
- 29 - *Nazario v State* 293 Ga. 480, 746 SE2d 109 (2013)
- 19 - *N. C. v Pierce* 395 US 711, 724 89 Sct 2072 73 LEd2d 656 (1969)
- 27 - *Nevelle v Classic* 141 FSupp 2d 1377 11th Dist Jan (2001)
- 27 - *Nichols v State* 17 Ga. App. 593, 87 SE 817 (1916)
- 37 - *Nixson v Newsome* 888 F2d 112 11th Cir (1989)
- 29 - *Polanco v State* 328 Ga App 513 (2014)
- 31, 49 - *Prou v U.S.* 199 F3d 37, 48 1st Cir (1999)
- 33, 40 - *Purvis v Crosby* 451 F3d at 740-43
- 32, 39 - *Ramos v Dept of Corr.* 575 Fed Appx 845 (2014)
- 5 - *Registe v State* 287 Ga. 452 July (2010)
- 42 - *Roe v Flores-Ortega* 145 LEd 2d 985 528 U.S. 470
- 19 - *State v Germany* 246 Ga. 455, 456 271 SE2d 851 (1980)
- 27 - *State v Griffin* 224 Ga App 225 Jan (1997)
- *State v Mamedov*
- 44 - *Sechler v State* 316 Ga App July (2012)
- 14 - *Shouse v Ursitt*. US Dist LEXIS 32409 May (2006)
- 16, 33, 34, 44 - *Strickland v Washington* 466 U.S. at 692
- 5 - *Thompson v State* 168 Ga App 734, 310 SE2d 725 (1983)
- 42 - *Tiller v State* 96 Ga. 430, 23 SE 825 (1895)
- 32 - *Tompkins v Hall* 291 Ga 224 July (2012)
- 32 - *Troxel v Granville* 530 U.S. 57, 65, 120 S.Ct. 2054, 174 LEd2d 49 (2000)
- 5 - *Tyree v State* 262 Ga. 395, 418 SE2d 16 (1992)

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- 3, 33, 34 - US v Cronin 466 US 648, 658-59 8 LE2d 2d 657 (1984)
- 33, 40 - US v Lawson 686 F3d 1317 11th Cir (2012)
- 23 - US v Marshank 777 FSupp 1507
- 8, 35 - US v Mills 760 F2d 1116, 1121-22 11th Cir (1985)
- 23 - US v Montaner US Dist LEXIS 16739 Jan (2012)
- 27, 31 - US v Price US Dist LEXIS 126126 11th Dist July (2009)
- 24 - US v Stringer 535 F3d 929 (2008)
- 37 - Walker v Haggins 290 Ga. 512 722 SE2d 725 (2012)
- 16, 21 - Washington v Glucksberg 521 US 702, 117 S.Ct 2258, 138 LE2d 772, 97 CDOS 5008 (1997)
- 32 - Wean v Budz US App LEXIS 24503 Dec (2014)
- 29 - Wharten v Henry 266 Ga 557 SE 2d 1996
- 35 - Wiggins v State 539 US 510, 522 156 LE2d 471 (2003)
- 33 - Wilcox v Ford 626 FSupp 768 Dec (1985)
- 38 - Wilson v State 217 Ga 73, 75-78, 90 SE2d 557 (1955)
- 41 - Woodard v Collins 898 F2d 1027, 1025 5th Cir (1990)
- 16, 21 - Zinerman v Burch 108 LE2d 1001, 494 US 113 (1990)
- 50 - Kotteakas v US 328 US 750 776 66 SCt 1239
90 LE2d 1557 (1946)

Federal or State Statutes / Ga. Court or State Bar Rules

- 4th, 5th, 6th and 14th US Constitutional Amendments
- Ga. Code of Judicial Conduct 3 c (1)(a)
- " " 3 (5)
- O.C.G.A. 15-18-5
- " " 16-1-7(a)
- Ga. State Bar Rule 4-102(d):17

GEORGIA COURT OF APPEALS

RECEIVED

2015 JUN 24 PM 3:09

COURT OF APPEALS

THE STATE OF GEORGIA

v

Cherokee Co. Indictment No. 03CR0293

REBECCA BOONE - Defendant

ENUMERATION OF ERRORS AND CITATIONS OF AUTHORITY REGARDING DEFENDANT'S APPEAL OF THE TRIAL COURT'S DISMISSAL OF DEFENDANT'S MOTION TO CONTEST THE ASSISTANT DISTRICT ATTORNEY'S MOTION TO DISMISS DEFENDANT'S 2011 APPEAL OF THE TRIAL COURT'S DENIAL OF DEFENDANT'S 2011 MOTIONS TO WITHDRAW HER GUILTY PLEA OUT OF TIME AND OUT OF TIME APPEAL, THE TRIAL COURT'S DISMISSAL OF DEFENDANT'S MOTION TO REVIVE THE ABOVE 2011 MOTIONS, THE TRIAL COURT'S DISMISSAL OF DEFENDANT'S APPEAL, AND THE TRIAL COURT'S FAILURE TO PERMIT DEFENDANT TO SUBMIT THESE MOTIONS PRO SE. The Ga. Appeals Court rather than the Ga. Supreme Court has jurisdiction to hear and consider this appeal.

Comes now Rebecca Boone, defendant herein, forced to proceed pro se with her enumeration of errors and citations of authority regarding defendant's appeal to this Georgia Court of Appeals of the trial court's dismissal

e

of defendant's Motion to Contest the Assistant District Attorney's Motion to Dismiss defendant's 2011 appeal of the trial court's denial of defendant's 2011 Motions to Withdraw her Guilty Plea Out of Time and Out of Time Appeal, the trial court's dismissal of defendant's Motion to Revive the above 2011 Motions, the Trial Court's dismissal of defendant's appeal, and the trial Court's failure to permit defendant to submit these Motions pro se.

Herein defendant will cite numerous incidents of prejudice she suffered as a result of ineffective assistance of her trial attorney Harvey and his associates who were ineffective at defendant's related Cobb County criminal cases and told defendant if she was convicted in those related Cobb County cases she would have to plead guilty in the related underlying Cherokee County criminal cases and when due to ineffective assistance of counsel defendant was convicted in the related Cobb County cases Attorney Harvey coerced defendant to plead guilty before a Cherokee County Trial Court he knew to be biased and prejudiced against defendant.

Also defendant received ineffective assistance by her Cobb County Appeal Attorney Longhi when after describing how the bias and prejudice of Cherokee County Sheriff's Office Officials, Cherokee County District Attorney's Office Officials and Officials of the Blue Ridge Judicial Circuit had affected her Cobb County trial in that all evidence, witnesses, and testimony presented

at defendant's Cobb County ^{trial} were brought from and compiled in Cherokee County by Cherokee County Officials known to be biased and prejudiced against defendant, Attorney Longhi misinformed defendant that he could not present that evidence ^{in appeal} but could only present evidence that Att'y Harvey had objected to on the record when Att'y Longhi knew or should have known a trial attorney's ineffective assistance of counsel could have been and should have been presented in defendant's Cobb County ^{RB appeal} ~~trial~~ of the related underlying criminal cases against her. (U.S. v Cronin 466 US 648 658-59 8 LEd 2d 657 1984 where there is no meaningful adversarial representation by counsel)

Defendant continued to receive ineffective assistance of counsel when Att'y McNeill Stokes was retained to submit an application for Writ of Habeas Corpus and as a formality prepared and submitted the Motions to Withdraw Guilty Plea Out of Time, Out of Time Appeal, and Extraordinary Motion for a New Trial on defendant's behalf and the focus of this instant appeal. Att'y Stokes told defendant he had to submit the above Motions to exhaust all state remedies before he could submit defendant's application for Writ of Habeas Corpus. Defendant told Att'y Stokes of the bias and prejudice against her by Officials of Cherokee County Sheriff's Office, Cherokee County District Attorney's Office and the Blue Ridge Judicial Circuit and Att'y Stokes failed by refusing to submit grounds of ineffective assistance

of defendant's trial counsel as it pretains to her Cherokee County guilty pleas, and the denial of defendant's Constitutional right to an impartial criminal investigation, prosecutor, and trial court in the underlying criminal cases against defendant.

The Sixth Amendment of the United States Constitution holds that "a defendant will be relieved of his burden to establish prejudice stemming from counsel's errors in 3 instances:

- 1) actual or constructive denial of counsel;
- 2) government interference with defense counsel;
- 3) Counsel who labors under an actual conflict of interest."

Heath v State 268 Ga. App 235, 601 SE 2d 758 (2004)

Even though defendant is not required to establish prejudice due to ineffective assistance of counsel and/or gov't interference with her att'y/client relationship defendant has suffered prejudice and will describe it hereafter in this appeal.

Defendant made the proper request to trial att'y Harvey's associate Atty David West who assured defendant he would file and later assured defendant he had filed the proper Motion to Recuse those Cherokee County Officials known to be biased and prejudiced against defendant from the underlying criminal cases against her.

See Registe v State 287 Ga. 452 July 12, 2010
Tyree v State 262 Ga. 395, 418 SE2d 16, 1992
(If defendant moves to recuse court officials the trial motion should be granted.)

This Motion to Recuse should be part of defendant's record that was transmitted to this Appeals Court for their review in this instant appeal and if the Motion to Recuse was not transmitted to the Appeals Court defendant requests the court grant defendant a hearing so that Atty West can be questioned regarding the Motion to Recuse which he filed on defendant's behalf in the underlying criminal cases against her.

AAA Hwy Express Inn v Hagler 72 Ga. App. 519
278 SE2d 462 (1945)

D.A.T v Delta Mac Prods Co. 157 Ga. App 423, 278
SE2d 73 1981

Thompson v State 168 Ga. App 734, 310 SE2d 725 (1983)
(Indirect evidence as well as every fact or circumstance serving to throw light upon the issue being tried is proper.)

Defendant has never waived her right to have these Cherokee County officials known to be biased and prejudiced against her recused from the underlying criminal cases against her because to do so would deny defendant an impartial law enforcement criminal investigation; prosecutor,

and trial court as has occurred for this defendant in the underlying criminal cases against her and defendant's Motions to Withdraw her Guilty Plea Out of Time, and Out of Time Appeal at issue in this instant appeal.

The United States Supreme Court has made clear that the waiver of a fundamental Constitutional right cannot be presumed, it must be ~~intentionally~~^{RB} intentionally relinquished.

Johnson v Zerbst 304 U.S. 458, 464, 58 S.Ct. 1019

82 LEd 1464 1938 (The determination of whether there has been an intelligent waiver must depend in each case upon the particular facts and circumstances surrounding that case (overruled in part by Edward v Arizona 451 U.S. 477 101 S.Ct 1880, 68 LEd 2d 378 1991))

The first and most egregious error by the Cherokee Co. trial Court was that they did not recuse themselves from the underlying criminal cases against defendant and their second error was they did not properly consider and make a decision on defendant's Motion to Recuse Cherokee Co. Officials known to be biased and prejudiced against her so their decision could be reviewed by a higher court thereby ^{SB} ensuring defendant was not deprived of her Constitutional right to an impartial criminal investigation, prosecutor, and trial court as defendant has been denied in these underlying criminal cases against her.

The trial Court's failure to properly rule on defendant's Motion to Recuse those Cherokee Co. Officials known to be biased and prejudiced against defendant, ^{have caused RB} defendant's Motions to Withdraw the Guilty Plea Out of Time and Out of Time Appeal ^{to} have not been considered and ruled on by an impartial Court and defendant has been denied her Constitutional right to due process and defendant requests this Ga. Appeals Court grant her appeal, allow her to withdraw her Cherokee Co. guilty plea out of time and to grant her a new trial in Cherokee Co. before an impartial trial Court and prosecutor.

At defendant's Cobb Co. trial of the related criminal cases against defendant which trial Atty Harvey had already asserted to defendant would determine whether or not she would have to plead guilty in Cherokee Co., Atty Harvey was ineffective assistance of counsel when he ignored defendant's statements to him that she felt like she had been drugged on the evening the underlying crimes occurred in Cherokee and Cobb Co. because she could recall almost none of the events that occurred during the underlying crimes. Atty Harvey admitted that defendant had told him she felt like she had been drugged in defendant first Habeas Corpus ^{RB} hearing the transcript of which defendant submitted as document # 11 in her appeal.

Defendant's trial attorney erred by failing to investigate the involuntary intoxication of defendant at the time the underlying crimes occurred as he admitted in defendant's first Habeas Corpus hearing the transcript of which defendant submitted as doc. # 11 with her appeal.

Defendant's trial attorney also erred by failing to investigate the existing, available, mitigating evidence of oxycontin and alcohol Cherokee Co. Sheriff's deputies seized from defendant's truck pursuant to defendant's arrest near to and within minutes of the occurrences of the underlying crimes which supports defendant's claim of involuntary intoxication at the time the underlying crimes occurred.

Code v Montgomery 799 F2d 1481 1482-84 11th Cir (1986)

United States v Mills 760 F2d 1116, 1121-22 11th Cir (1985)

Gomez v Beto 462 F2d 596 597 5th Cir (1972)

(Regarding failure by defendant's trial att'y to investigate and submit the affirmative defense of involuntary intoxication where there was obvious, available, mitigating evidence to support that claim even though requested to do so by defendant, "it can hardly be said defendant has had effective assistance of counsel.")

Hill v Lockhart 474 U.S. 52 59-60 88 LEd 2d 203 1985

(Regarding the prejudice surrounding an attorney's failure to investigate or discover exculpatory evidence.)

Instead defendant's trial atty offered no viable defense for defendant in the Cobb Co. trial that consisted entirely of Cherokee Co. evidence thus was ineffective assistance of trial counsel at defendant's Cobb Co. trial and again in the underlying Cherokee Co. criminal cases against defendant when he followed through with his previously stated intention that if defendant was convicted in Cobb Co. she would have to plead guilty in the underlying Cherokee Co. criminal cases against defendant and thereafter led defendant before a Cherokee Co. trial Court known to be biased and prejudiced against defendant as she had told her trial attorney had been reported in the Sept. 19, 2000 and the May 3, 2001 Atlanta Journal Constitution (AJC herein) newspaper articles defendant submitted as doc # 14 and # 15 with her appeal and as shown in the Equal Employment Opportunity Commission (EEOC herein) action against the Cherokee Co. District Atty's Office which defendant submitted as doc. # 13 with her appeal, and coerced defendant to plead guilty.

Due to government interference by Officials of the Cherokee Co. District Atty's Office and/or the Trial Court with defendant's atty/client relationship with trial atty and Atty Stokes who submitted the Motions to Withdraw Guilty Plea Out of Time, Out of Time Appeal, and Extraordinary Motion for a New Trial all of defendant's counsel, Mr. Harvey, Mr. Longhi, and Mr Stokes have rendered ineffective assistance of counsel for defendant in the underlying criminal cases against her, ignoring defendant's

requests and interests, none of these attorney's fulfilling their duty to be defendant's advocate in any meaningful sense of the word, their performances falling well below an acceptable level of advocacy for defendant in the underlying criminal cases against her or they would never have allowed defendant to be investigated, prosecuted, and adjudicated by Cherokee Co. Officials that evidence indicated were biased and prejudiced against her in violation of her Constitutional right to due process and effective assistance of counsel guaranteed by the 4th, 5th, 6th, and 14th Amendments.

Either error or government interference by the Cherokee Co. Superior Court Clerk caused the failure in 2011 to transmit defendant's entire case, omitting nothing, to this Georgia Appeals Court pursuant to defendant's Nov. 29, 2011 Notice of Appeal of Cherokee Co. trial Court's denial of defendant's Motions to Withdraw the Guilty Plea Out of Time and Out of Time Appeal and Extraordinary Motion for a New Trial.

Either error or gov't interference by the Georgia Department of Corrections (GDOC herein) Officer who failed to deposit defendant's 2011 appeal of the denial of the above Motions after defendant placed the manilla envelopes containing the appeal in her hands, Harris v State 278 Ga. 280 600 SE2d 592 2004 (nonamendable defect that whether by accident or mistake caused defendant to forfeit a procedure she was otherwise entitled to)

Defendant has been, for procedural default due to that unadjudicated appeal, denied her application for Certificate of Probable Cause and the subsequent Motion for Reconsideration by the Ga. Supreme Court which defendant submitted with her appeal as doc # 35, #36, #37, and #38 just as Cherokee Co. Officials knew or should have known would happen for defendant in her future legal motions and actions. This is also another example of the prejudice suffered by ^{defendant due to} Cherokee Co. Court Officials known to be biased and prejudice against defendant.

King v Bell 378 F3d 550, 553, 554 6th Cir 2004

(the gov't could prevent any defendant from filing a timely claim simply by failing to transmit relevant evidence in a case.)

Defendant requests this Appeals ^{Court RB} consider the actions and inactions by her trial attorney, Cobb Co. appeal atty, Atty Stokes who submitted the Motions at issue here as a formality so he could submit an application for Writ of Habeas Corpus, as well as Officials of the Cherokee Co. Sheriff's Office, Cherokee Co. Dist. Atty's Office and Officials of the Blue Ridge Judicial Circuit known to be biased and prejudiced against defendant before, during, and after the Cherokee Co. hearing for the ^{RB} ~~the~~ Motions at issue in this instant appeal because defendant is entitled to either:

A.) have had her 2011 appeal of the trial Court's denial of her Motions to Withdraw the Guilty Plea Out of Time, Out of Time Appeal, and Extraordinary Motion for a New trial considered on its merits by this Appeals Court; or

B.) to have had the issues of ineffective assistance of all her counsel and the denial of an impartial law enforcement investigation, prosecutor, and trial court in the underlying criminal cases against her decided on the merits in her Habeas Corpus and the subsequent application for Certificate of Probable Cause and Motion for Reconsideration of the denial of her habeas corpus.

So far Government Interference and/or Ineffective assistance of all defendant's counsel have prevented her from doing so even though it was within the Ga. Supreme Court's discretion in defendant's application for Certificate of Probable Cause and Motion to Reconsider just as it is now within this Georgia Court of Appeal's discretion to determine that the denial of defendant's fundamental Constitution right to effective assistance of counsel and an impartial investigation, prosecution, and trial Court for defendant in the underlying criminal cases against ^{her RB} overcomes any procedural bar that exists to prevent this fundamental miscarriage of justice.

Hudson v Whitley 979 F2d 1058

(a "fundamental miscarriage of justice" implies that a Constitutional rights violation probably caused the conviction of an innocent person, which includes the affirmative defense of Involuntary Intoxication supported by the evidence.)

Murray v Carrier 477 U.S. 478, 488, 91 LEd 2d 397 1986

Coleman v Thompson 501 U.S. 722, 750, 115 LEd 2d 640 1991

(Showing cause and prejudice of ineffective ass't counsel overcomes procedural bar of why claims of Constitutional rights violations, such as defendant has suffered, 'were not properly presented and ruled on by the trial court.')

If defendant was denied her Constitutional rights by Officials of the Cherokee Co. Sheriff's Office, Cherokee Co. District Atty's Office, and Officials of the Blue Ridge Judicial Circuit when she was the victim of domestic violence by her abusive highranking Cherokee Co. Sheriff's Deputy husband, as she was, and as was reported in the Sept. 19, 2000 and the May 3, 2001 AJC newspaper articles submitted as documents #14 and #15 with this appeal and which may be referred to there as they pertain to this brief, how much more likely is it that these same Cherokee Co. Officials have, as defendant claims herein, denied her Constitutional rights as defendant is enumerating when the United States Supreme Court has made clear that not only the rights enumerated in the U.S. Constitution's Bill of Rights but also

certain unenumerated rights merit heightened protection against government interference with a defendant's criminal case and his atty/client relationship?

Holcomb v Gray 234 Ga 7, 214 SE2d 512

(It is the policy of the Ga Appellate Courts to avoid dismissing appeals and to try to reach the merits of every case.)

Leslie v Williams 235 Ga App 657 150 SE2d 130 (1998)

(The Appellate Court exercises its discretion to reach the merits)

Daniel v Williams 474 U.S 327 88 LEd 2d 662

Shouse v Utsitt, U.S. Dist LEXIS 32409 May 2006

(Includes a substantive component to provide heightened protection against govt interference of Constitutional right no matter how fair the procedure used to implement them is. 14th Amendment

I. Defendant's Cherokee Co. Trial Judge erred in the following enumerated manner:

error 1) By not recusing himself from defendant and the underlying criminal cases against her pursuant to Ga. Code of Judicial Conduct 3 c (1)(a) which provides a court official shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

The extrajudicial sources of disqualifying bias which is the first prong of the test in Strickland v Washington 466 US 668 687 (3) 104 S.Ct. 2052 80 LE 2d 674 (1984) regarding the trial judge

are the Sept. 19, 2000 and the May 3, 2001 A.J.C. newspaper articles which reported the maltreatment of, bias and prejudice against defendant by Officials of the Blue Ridge Judicial Circuit which defendant submitted with the appeal ~~at~~ as doc. # 14 and # 15.

In doc # 14 in paragraph # 10 the A.J.C. reported how Officials of the Blue Ridge Judicial Circuit refused to grant defendant's divorce unless she dropped the multiple domestic violence charges against her abusive high ranking Cherokee Co. Sheriff's Deputy husband, which she refused to do and the court later dismissed anyway.

In doc # 14 in paragraph # 18 the A.J.C. reported how the Cherokee Co. Dist Atty. refused to prosecute defendant's abusive high ranking C.C.S.O. deputy/husband for the domestic violence charges levied against him by defendant even though the Dist Atty's Office had jurisdiction and the responsibility to do so.

The remainder of the A.J.C. article (doc. # 14) described the false justification other Officials gave for dismissing the domestic violence charges against defendant's C.C.S.O. husband who had abused defendant and women before her with impunity during the entire length of his law enforcement career. Decades.

Cherokee Co. trial Judge Harris expressed his negative opinion of defendant and her domestic violence charges against her C.C.S.O. husband to Director Meg Rogers of the Cherokee Co. Battered Women's Shelter and defendant requests a hearing so this issue can be considered by this appeals Court.

Defendant has suffered prejudice of being denied an impartial trial judge which she will enumerate later herein and that prejudice is the second prong of the test in Strickland v Washington regarding "cause" and "prejudice" to over procedural bars.

Washington v Glucksberg 521 US 702, 117 S.Ct. 2258, 138 LEd 2d 772, 97 CDOS 5008 (1997) (The Court reaffirmed the U.S. Constitution provides heightened protection against gov't interference with certain fundamental rights and liberty interests and forbids gov't to infringe on fundamental liberty at all.)

See also McKinney v Pate 20 F3d 1550 11th Cir (1994)

citing Zinerman v Burch 108 LEd 2d 100, 494 U.S. 113 (1990)

Malloy v Hogan 378 US 1, 84 S.Ct. 1489 12 LEd 2d 653 164 (Fifth Amendment privilege is applicable through the due process clause of the Fourteenth Amendment.)

Mendenhall v Hopper 453 F Supp 977 (S.D.G.V. 1978) aff'd 591 F2d 1312 5th Cir (1979)

Moran v Clark 296 F3d 638 Sept(2001) (14th Amendment guarantees "substantive due process which prevents gov't from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.")

error 2) by not recusing the Cherokee Co. Dist. Atty and his subordinate ass't dist attys from defendant and the underlying criminal cases against her pursuant to Ga. Code of Judicial Conduct 3(5) which provided that not only the judge but staff, court officials, and others subject to the judge's direction and control shall perform judicial duties without bias or prejudice and to allow defendant to be prosecuted by the Officials of the Dist Atty's Office when the judge knew or should have known of the E.E.O.C. action taken by defendant before the criminal charges against her when she was employed by the Dist Atty's Office and had to take the E.E.O.C. actions against the Dist Atty's Office for sexual discrimination of, retaliation against defendant. ^{RB.} ~~when she was emp~~
Id.

error 3) by not recusing Cherokee Co. Sheriff's Office Officials that the judge knew or should have known to be abusive of, bias and prejudice against defendant and pursuant to Ga. Code of Judicial Conduct 3(5) named above to continue to be actively involved in the criminal investigation of defendant and the underlying criminal

cases against her especially regarding the collection and chain of evidence such as the blood samples of defendant and her co-defendants taken by search warrant shortly after defendants' arrests near to and within minutes of the occurrence of the underlying crimes which may have been tampered with in that there is a glaring discrepancy between what the results of the Ga. Bureau of Investigation (GBI herein) blood tests report and the evidence of oxycodone and alcohol seized by C.C.S.O officials from defendant's truck pursuant to arrest and the testimony of defendants about the drugs and alcohol that were consumed the evening the underlying crimes occurred, defendant's involuntarily in violation of 4-8-14 Amicus?

Id.

error 4) by not giving defendant credit for the years and months she served in the county jail pending trial pursuant to her arrest in Cherokee Co. by C.C.S.O deputies in the underlying criminal cases against her when both defendant's co-defendants did receive credit for the same time they served in the county jails pending trial as shown in the GDOC sentence computations submitted as doc #20 and #21 in defendant's appeal. These GDOC sentence computations also demonstrate the proper impartiality of the Cobb Co. Court who gave all defendant's credit for all the time they each served in various county jails pending trial.

Trial Judge Harris's singling defendant out for harsher treatment than her co-defendants and other police officers who had been similarly situated as defendant by not giving defendant credit for the almost three years she served in the county jails pending trial is another demonstration of prejudice defendant suffered as a result of being denied an impartial trial judge. Also the second prong of Strickland v Washington, N.C. v Pierce 395 U.S. 711 724 89 S.Ct 2072 23 Let 2d 656 (1969) Cochran v State 315 Ga App ⁽²⁰¹²⁾ Ferrell v Hall 640 F3d 1199, (2011) (error not to give credit for time served in county jail pending trial and a harsher sentence than others in similar situations constitutes prejudice.)

error 5) by not allowing defendant to file for final disposition of additional charges stemming from these underlying criminal charges in violation of the U.S. Constitution's Speedy Trial Clause submitted as doc # 24 with defendant's appeal and confirmed by Mr. Bonner of the Ga. Public Defender Standards Council in his letter submitted as doc. # 25 with this appeal.

Id.

error 6) by not advising defendant at her plea hearing that she could withdraw her guilty plea.

State v Germany 246 Ga 455, 456 271 SE2d 851 (1980)

II. The Cherokee Co. District Attorney erred regarding defendant and the underlying criminal cases in the following enumerated manner:

error 1) By not recusing himself and his subordinate assistant district attorneys from defendant and the underlying criminal cases against her even though the defendant had previously been employed at the Cherokee Co. District Attorney's Office and subsequently had to file a Federal EEOC action against the Cherokee Co. District Attorney's Office for sexual discrimination of, retaliation against defendant when she was employed there and the proof of this EEOC action was submitted as doc. # 13 with defendant's appeal and can be referred to there as it pertains to this brief.

The Georgia Code of Judicial Conduct Canon 3c (1)(a) provides that a court official should disqualify himself in any proceeding in which his impartiality might be reasonably questioned.

Due to the above described EEOC action as well as the context of the AJC newspaper articles submitted as doc. # 14 and # 15 in this appeal the impartiality of the Cherokee Co. District Attorney's Office regarding defendant might reasonably be questioned thus should have been recused from defendant and her cases

Washington v Glucksberg 521 US 702, 117 SCt 2258
138 LEd 2d 772, 97 CDOS 5008 (1997)

(Reiterated the U.S. Constitution

1) provides heightened protection against gov't interference with certain fundamental rights and liberty interests.

2) forbids gov't to infringe on fundamental liberty and interests at all.)

McKinney v Pate 20 F3d 1550 11th Cir (1994) citing
Zinermon v Burch 494 US 113 1990

error - 2) By not contacting the Georgia Attorney General pursuant to O.C.G.A. 15-18-5 which provides that "when a district attorney is disqualified from interest or relationship from engaging in a prosecution the District Attorney shall notify the Attorney General of the disqualification. The Attorney General is then authorized to request the services of and thereafter... appoint a competent attorney to act as district attorney pro tempore.

Due to the personal interest in defendant's cases the District Attorney in Cherokee Co. did not disqualify himself and his subordinate assistant dist. attys neither did he notify the Attorney General pursuant to O.C.G.A. 15-18-5 stated above and as a result defendant has been denied her Constitutional right to an impartial prosecutor in the underlying criminal cases against her.
Id.

error - 3) By having conferences with defendant's trial attorney regarding defendant and the underlying criminal cases against her outside the presence and knowledge of defendant constituting prosecutorial misconduct, a personal interest in defendant's case and govt interference with defendant's attorney/client relationship.
Id.

error - 4) By being present in the courtroom at defendant's preliminary hearing which demonstrates a personal interest in defendant's case.

Id.

error - 5) By entering into an agreement with defendant's trial attorney outside the presence and knowledge of defendant to have defendant's trial attorney apologize to him on defendant's behalf in open court at defendant's preliminary hearing constituting personal interest, prosecutorial misconduct and gov't interference with defendant's attorney/client relationship when trial atty and District Atty followed through with the apology described above.

Id. Also:

U.S. v Montaner U.S. Dist LEXIS 16739 Jan 23 2012
("When gov't interference in an atty/client relationship results in ineffective ass't counsel or when gov't engages in outrageous misconduct (see U.S. v Marshank 777 F Supp 1507) in that case the 4th Circuit held that a claim of gov't interference with atty/client relationship has 3 components.

1) gov't was objectively aware of an on-going personal atty/client relationship

2) gov't deliberately intruded into that relationship
3) as a result defendant suffered actual and substantial prejudice.

see also U.S. v Stringer 535 F.3d 929 2008

The Cherokee Co. District Atty knew Atty Harvey was representing defendant in the underlying criminal cases against her as demonstrated when trial atty Harvey apologized to the District Atty on defendant's behalf at defendant's preliminary hearing where the District Atty was present and stood to receive the apology from trial atty.

The Cherokee Co. Dist. Atty deliberately intruded in defendant's atty/client relationship with her trial atty by holding conferences with defendant's trial atty outside the presence and knowledge of defendant to meet agree to meet in the courtroom in open court at defendant's preliminary hearing in defendant's presence and stand to receive the apology from defendant's trial atty on defendant's behalf.

As a result defendant's trial atty did not follow through with the Motion to Recuse Officials of the Cherokee Co. D.A.'s office 1 and other Cherokee Co. Officials known to be biased and prejudice against defendant which at defendant's request had been

filed in Cherokee Co. by Atty West, associate of trial atty Harvey, on defendant's behalf in the underlying criminal charges against.

Defendant has requested, and hereby again requests the Ga. Appeals Court ensure the transcript of the defendant's preliminary hearing described in the previous paragraphs be transmitted to them for their review in this defendant's instant appeal as the actions by defendant's trial atty and the District Atty are relevant to defendant's appeal, the preliminary hearing and its transcript are a part of defendant's entire case which defendant requested in her Notice of Appeals be transmitted to the Appeals Court omitting nothing.

If the transcript ~~has~~^{RB} described herein has not been transmitted to the Ga. Appeals Court defendant, pursuant to her June 3, 2015 Motion to Correct the Omission of Sealed Deposition with Video Interview in regard to defendant's underlying cases, requests this Court to compel the Cherokee Co. Officials to transmit the preliminary hearing transcript described above to them for their review as it is a part of the entire case that should be transmitted to and considered by this court,

or in the alternative grant defendant a hearing so defendant's trial atty Harvey and the District Attorney at the time of the above described preliminary hearing occurred can be questioned about the apology incident.

The failure, due in part by the above described govt interference with defendant's atty/client relationship, of defendant's trial attorney to follow through with the Motion to Recuse Cherokee Co. Officials known to be biased and prejudiced against defendant has caused her to suffer actual and substantial prejudice in that an apology to the District Atty was directly against defendant's wishes and subsequently defendant's trial atty failed to follow through with the Motion to Recuse that had been filed at defendant's request, defendant was denied her Constitutional right to an impartial prosecutor in the underlying criminal cases against her as well as other prejudices defendant will describe in this appeal.

McLaughlin v Payne Ga LEXIS 588 July 2014

(personal interest in defendant's criminal case)

Darden v Wainwright 477 U.S. 168, 91 LEd 2d 144 (1986)

(improper presence so infected the defendant's case with unfairness as to make the resulting plea a denial of due process.)

Canady v U.S. LEXIS 140293 Oct 2014 see also

Aron v U.S 291 F3d 708, 714-15 11th Cir 2012

(if defendant alleges facts that, if true, would entitle him to relief then the Court should order an evidentiary ^{hearing} and rule on the merits of his claim.)

Moran v Clark 296 F3d 635 Sept 2001 (14th Amendment guarantees substantive due process which prevents gov't from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty and prohibits conduct that otherwise offends & judicial notions of fairness or is offensive to human dignity.)

U.S. v Price U.S. Dist LEXIS 126126 July 2009 11th Dist. (counsel working in contravention of Strickland and its progeny.)

Neville v Classic 141 F Supp 2d 1377 Jan (2001) 11th Dist. (Court concerned that "prosecutors exercise formidable and easily abused power.")

State v Griffin 224 Ga App 225 Jan 1997; see also

Merrit v State 254 Ga App 2002

(Both District Attys of the above two cases recused themselves and their asst dist. attys due to an interest or relationship associated with the case. The Attorney General was properly notified.)

Davenport v State 157 Ga App (1981) ("it was improper and reversible error for the D.A. to be present in the courtroom even though the D.A. did not try the case himself due to his prior relationship to the victim.")

Mendenhall v Hopper 453 F Supp 977 (S.D. GA.) (1978)

aff'd 591 F 2d 1342 5th Cir (1979) (Failure by judge to disqualify a judicial ^{officer} which serves to deprive defendant of an unbiased trier of the facts is a denial of due process.)

Nichols v State 17 Ga. App. 593, 87 SE 817 (1916) (Court held 'it was good Ga. Law to recuse certain court officials'.)

Caperton v A.T. Massey Coal Co. US 129 S.Ct 2252, 2266, 173 LEd 2d 1208 (2009); see also

Gillis v City of Waycross 247 Ga. App 119, 122, 543 SE 2d 423 (2000)

(It is possible for a disqualifying conflict of interest to arise where prosecutor has acquired a personal interest in defendant's conviction.)

King v State 246 Ga. 386 Sept 1980 see also

Birt v State 256 Ga. 483, 350 SE2d 241 1986

(It is possible for a court official to have a personal bias or prejudice against a defendant, consequently it is error for the court official to be involved in a criminal case against defendant.)

error 6) By not having all criminal charges stemming from the underlying criminal charges adjudicated at the same time and not advising defendant that there would be additional charges and an additional prison sentence to the sentence defendant is now serving. Defendant submitted the documents that show the additional related charge by the Cherokee Co. Dist. Atty's Office as doc. # 23 and # 24 with her appeal and can be referred to there as it pertains to this brief. Defendant also submitted Cherokee Co. Court document # 22 that showed the charges that were Nol Pros against defendant.

Polanco v State 328 Ga. App 513 2014

Bradley v State 292 Ga. 607 740 SE 2d 100 (2013)

Ingram v State 279 Ga. 132 610 SE 2d 21 (2005)

(Court erred in failing to merge charges of agg. assault and armed robbery when the act was committed at the same time, place, and inspired by the same criminal intent.)

Nazario v State 293 Ga. 480, 746 SE 2d 109 (2013)

(A conviction which merges with another conviction is void and a sentence imposed on such a conviction is illegal under O.C.G.A. 16-1-7(a) which provides that a defendant may not be legally convicted of a crime that is included in another crime for which defendant also stands convicted.)

The Cherokee Co. District Atty knew or should have known of the Ga. law and how the court considered such cases and the additional charge and pending prison sentence which defendant was singled out for by Cherokee Co. Court officials was a demonstration of prejudice against defendant. Defendant was denied an impartial prosecutor.

Wharton v Henry 266 Ga 557 SE 2d 1996

(Re: Ga. Rules of Court Ann. 33.8 - a reviewing court conducting a manifest injustice review is not limited to the record of the guilty plea, but may consider subsequent evidence presented to the court.)

Ferrell v Hall 640 F3d 1199 (2011) and Cochran v State 315 Ga App (2012)

(a harsher sentence than others similarly situated constitutes prejudice)

Defendant's co-defendants did not receive additional charges.

III. Defendant's trial Attorney Harvey was ineffective assistance of counsel for defendant at her Cherokee Co. plea negotiations and hearing and erred in the following enumerated manner:

- error 1) By not following through to completion and allowing the trial court to properly rule on defendant's Motion to Recuse those Cherokee Co. Officials of the Sheriff's Office, the District Atty's Office and Blue Ridge Judicial who were known to be biased and prejudiced against ^{her} which had been filed on defendant's behalf by Mr. Harvey's associate Atty David West.

Defendant had described to both Trial Atty Harvey and his associate Atty West the bias and prejudice against her by Cherokee Co Officials and told them both of the Sept. 19, 2000 and May 3, 2001 A.J.C. newspaper articles that reported the maltreatment of, bias and prejudice against defendant by officials of the Cherokee Co. Sheriff's Office, Cherokee Co. Dist. Atty's Office and the Blue Ridge Judicial circuit. She also told both attys of the Federal EEOC action she had to take against the Cherokee Co. District Atty's Office for sexual discrimination of, retaliation against

defendant when she had previously been employed by the Cherokee Co. District Atty and submitted these documents as #13, #14, and #15 with her appeal and they can be referred to there as they pertain to this brief.

Atty Harvey's failure to follow through to completion and allow the Court to rule on defendant's Motion to Recuse caused defendant to forfeit a legal procedure to which she was otherwise entitled and as a result defendant was denied an impartial criminal investigation, prosecutor and trial court in the underlying criminal cases.
Pro v U.S 149 F3d 37, 48 1st Cir 1999

(When atty fails to raise (or follow through with) an important obvious defense without any imaginable strategic or tactical reason for the omission his performance falls below a standard of proficient representation the U.S. Constitution demands)

Garcia - Duran v U.S. US Dist. LEXIS 58847 Apr 2013
(Atty who gives bad advice as to accepting a plea is ineffective and defendant is entitled to relief.)

Godfrey v M^cDonough US Dist LEXIS 25079 Apr (2007)
(Atty caused defendant to forfeit a judicial proceeding to which defendant was otherwise entitled.)

U.S. v Price US Dist LEXIS 126126 11th Dist July (2009)
(Atty working in contravention of Strickland and its progeny.)

Miles v Martel 696 F3d 889 2012

(6th Amendment right to effective counsel extends to plea bargaining process.)

Tompkins v Hall 291 Ga. 224 July 2012

(Ineffective ass't counsel is sufficient to overcome procedural bar.)

Adams v Wainwright 709 F2d 11th Cir (1983)

(A tactical decision is ineffective ass't counsel if it is so patently unreasonable that no competent att'y would have chosen it.)

Defendant's Trial Atty Harvey's tactical decision to not follow through with defendant's Motion to Recuse that Atty West had filed on her behalf at her request was so patently unreasonable that no competent att'y acting as advocate in any meaningful sense of the word would have chosen it because there is no right more fundamental than a defendant's right to an impartial criminal investigation, ~~prosecution~~ prosecutor, and trial judge in criminal cases against him.

Wean v Budz US App LEXIS 24503 Dec 2014

Troxel v Granville 530 US 57, 65, 120 S.Ct 2054, 147 LEd2d 49 (2000)

(Due Process Clause has a substantive component that provides heightened protection against gov't interference with attorney/client relationship.)

Ramos v Dept of Corr 575 Fed Appx 845 July 2014

(The U.S. Supreme Court established in Strickland v

Washington that prejudice must be proven for all claims of ineffective ass't counsel except those situations involving the actual or constructive denial of counsel, govt interference with atty/client relationship and an actual conflict of interest.) See also

Purvis v Crosby 451 F3d at 740-43

U.S. v Lawson 686 F3d 1317 11th Cir (2012)

Strickland v Washington 466 U.S. at 692 citing

U.S. v Cronk 466 U.S. 648, 659, 104 S.Ct 2039, 80 LEd2d 657

and n. 25 466 U.S. 648, 104 S.Ct 2039, 2046-47, 80 LEd 2d 657
~~and n. 25~~ (1984)

Wilcox v Ford 626 F Supp 768 Dec 1985

(Any person convicted of a crime has the right to have his conviction reviewed to determine whether he was treated fairly as per the U.S. Constitution, when there is a mixed question of law and fact the state is not entitled to a presumption of correctness.)

error 2) By failing to investigate and present the affirmative defense, and defendant's only defense, of involuntary intoxication of defendant at the time the underlying crimes occurred when Atty Harvey admitted in his testimony at defendant's August 11, 2011 Habeas Corpus hearing which defendant submitted as document #11 in her appeal and can be referred to there, and where defendant identified the parts of that transcript in which Atty Harvey admitted that "Perhaps, yes."