Application to the Scottish Criminal Cases Review Commission (SCCRC)

To: SCCRC

From: James Casey (14704 at HMP Addiewell)

Summary

1. In this application to the SCCRC I would like to point out a miscarriage of justice that happened at my trial for murder in 1991. I will list two 'stateable grounds of review' that have never been raised before.

2. The first new stateable ground of review concerns the 'charge' to the jury. During his charge to the Jury, the trial judge, Lord Maclean, after recounting the main argument for my defence, said: 'Therefore, said Mr Robertson, McNairn was not wearing the white gloves, it was Casey who was wearing the white gloves that night, and he was the signaller. Ladies and gentlemen, you would have followed that line of reasoning by Mr Robertson**. I have to say the logic of it escapes me, but it is a matter for you to consider…'** (*James Casey v HMA* [2011] HCJAC 19 at para. 9).

3. For a judge to say this to a jury a) is completely unacceptable; and b) amounts to a miscarriage of justice. A judge is not allowed to give his view on the facts and the contentions of counsel to a jury. This amounts to the judge saying 'the main argument for this accused doesn't really stack up, therefore you had better find him guilty.'

4. The second new stateable ground of review concerns the *Cadder* case (*Cadder v HMA* [2010] UKSC 43). The prosecution unlawfully relied on evidence gained from myself and my co-accused before we were offered legal advice. This point was not taken on appeal as I acted for myself and have only been made aware of this problem.

5. The rest of this application will first list the cases I have been involved in. It will then state in more detail the two new stateable grounds of review before briefly listing some other new points that have come to my attention and that led to me not getting a fair trial in 1991. It will conclude by showing that my conviction for murder in 1991 was a miscarriage of justice.

History of Cases

6. Most of the information here is taken from the report of a previous appeal taken by SCCRC in 2011 when new DNA evidence that exonerated me was found. The case is *James Casey v HMA* [2011] HCJAC 19.

7. Details of the trials and appeals that I have had are:

    7.1. 15 January to 7 February 1991. Judge - Lord MacLean. The jury found me guilty - 'Charge 1: guilty (unanimous) of assault, robbery and murder; Charge 2: guilty (unanimous) of theft of the motor vehicle.' (*James Casey v HMA* at Para.10)

    7.2. 1992 - Appeal against Conviction. 'The appellant appealed against conviction. [Represented myself (1993 SLT 33)] He was unsuccessful, all as set out in the Opinion of Lord Justice-Clerk Ross dated 3 July 1992.' (*James Casey v HMA* at Para. 12)

    7.3. *Casey v HM Advocate* [1993] JC 102 - Appeal against sentence. Lords LJ-C Ross, Murray, Morrison. Successful reduced to 15 years from 20.

    7.4. 2002 - Appeal against sentence (due to new tariff system) – Lord MacLean presiding, Gordon Jackson representing. 'In 2002, following upon the introduction of punishment parts, the sentence became one of life imprisonment with a punishment part of 11 years' (*James Casey v HMA* at para. 11)

7.5. *James Casey v HMA* [2011] HCJAC 19 – An appeal against conviction after referral by the Scottish Criminal Cases Review Commission when new DNA evidence was available. Lady Paton, Lord Clarke and Lord Brodie. Appeal unsuccessful.

The first new stateable ground of review

Lord Maclean – The misdirection – A clear miscarriage of justice

8. Throughout the trial, Lord MacLean developed a personal impression of my co-accused. '[McNairn] had no criminal record, and [he] struck me as weak, rather pathetic and easily led.' (This came to light in his appeal report that I have never seen - *James Casey v HMA* at para. 11).

9. This, it is contended, led to Lord Maclean being convinced of my guilt. He is admitting that during the trial he lost his impartiality. Lord MacLean's view contrasted with the psychiatrist from Carstairs who interviewed McNairn and myself. He found that McNairn was capable of this type of violence whereas I was not. This was not mentioned in *James Casey v HMA*.

10. I contend that a major problem developed when Lord MacLean didn't keep his lack of impartiality to himself. During his charge to the jury, he commented adversely on my main argument. My advocate (Mr. Robertson) had explained to the jury that I was wearing the white gloves (and therefore was the lookout and signaller and therefore innocent of murder).

11. Lord Maclean after recounting this argument said: 'Therefore, said Mr Robertson, McNairn was not wearing the white gloves, it was Casey who was wearing the white gloves that night, and he was the signaller. Ladies and gentlemen, you would have followed that line of reasoning by Mr Robertson**. I have to say the logic of it escapes me, but it is a matter for you to consider…'** (*James Casey v HMA* at para. 9)

12. I contend that you cannot have a clearer miscarriage of justice.

13. For a judge to say this to a jury a) is instructing the jury to not accept this argument; and b) amounts to a miscarriage of justice.

14. Lord Maclean also argued in more detail against the arguments led by my advocate in relation to the evidence (see para. 35 *James Casey v HMA*).

15. A judge is not allowed to give his view of counsel's arguments and evidence to a jury. In this instance this amounted to the judge saying – 'the main argument for this accused doesn't really stack up, therefore you had better find him guilty'.

16. Even though Lord Maclean followed this by saying it is a matter for you, this is too late. The damage has been done. If the logic of the argument escapes the judge then the jury will follow the judge and reject the argument.

17. This was not raised at my appeal against conviction in 1992 as I represented myself. I had not seen and was not given the charge. Plus, I was not given any other reports or facilities to help me prepare my appeal.

18. The reason for doing my appeal myself was that I could not believe that I had been found guilty of murder. I am innocent. I lost all trust in the lawyers working on my behalf and wish I had done the original trial myself.

19. This statement / instruction to the jury is so prejudicial that it amounts to a miscarriage of justice. A judge cannot dismiss an accused's principal argument in this fashion.

The second new stateable ground of review

The 'Cadder' Problem

20. The case of *Cadder v HMA* [2010] UKSC 43 states at paragraph 1:

'This is, in effect, an appeal against the decision of the *High Court of Justiciary in HM Advocate v McLean [2009] HCJAC 97, 2010 SLT 73* , which

was heard by a bench of seven judges. The link between that case and the appeal is that the minuter in that case and the appellant, Peter Cadder, in this were both detained under section 14 of the Criminal Procedure (Scotland) Act 1995 , as amended ("the 1995 Act"). This has given rise, in both cases, to the question whether the Crown's reliance on admissions made by a detainee during his detention while being interviewed by the police without access to legal advice before the interview begins is incompatible with his right to a fair trial. '

21. The question was answered in the positive. The Supreme Court held that all trials held in Scotland where the prosecution relied 'on admissions made by a detainee during his detention while being interviewed by the police without access to legal advice before the interview begins is incompatible with [an accused's] right to a fair trial.' (Cadder at paras. 63 and 108)

22. Note that judges do not make law but only state the law as it has always been. This means that both my own and my co-accused rights to a fair trial under the common law and article 6 ECHR were violated at the original trial.

23. Please note that if necessary, I will state authority for the following propositions: a) the common law right to a fair trial is stronger than article 6 ECHR; and b) the UK has a declaratory system of law. This means judges state the law as it has always been.

24. At the original trial the Crown, unlawfully, relied 'on admissions made by a detainee during his detention while being interviewed by the police without access to legal advice before the interview begins' (*James Casey v HMA* at Para. 2).

25. See also para. 34(iii),

26. Lord Hope at paras. 58 to 62 and Lord Rodger at paras. 99 to 103 of *Cadder* set out the principle of legal certainty and stated that unless a) the SCCRC decided to raise an appeal; or b) that justice required it. then older cases decided pre *Cadder* should not be reopened.

27. I contend that due to my frustration with my legal representation that led to me representing myself on appeal that a) the SCRRC should refer this case on *Cadder* grounds (this is expressly allowed by Lord Rodger at para. 103); and b) justice requires this decision to be overturned (see the citation of para. 126 of *A v The Governor of Arbour Hill Prison* [2006] IESC 45, [2006] 4 IR 88 at para. 61 of *Cadder*).

Other problems

My representation at the trial and the possibility of Lord MacLean picking this case (therefore he could not be seen to be impartial as he had a personal interest in the case)

28. During the murder trial my solicitors told me that Lord MacLean wanted to take this trial as it would allow him to visit his parents. I was also informed that during the trial Lord MacLean lived with his parents in Inverness. It is possible that the trial had been discussed between Lord MacLean and his parents. I contend that the excessive sentence (*Casey v HM Advocate [*1993] JC 102) given by Lord MacLean came as a result of his wish to show his parents and the local people that he wouldn't stand for vicious murders in his area. Therefore, he was not impartial. The question that comes up is did Lord MacLean pick this case and was this due to his links to the area?

29. My solicitor at first acted for McNairn, then swapped. Two special defences of incrimination were lodged in front of Lord Maclean by the same solicitor.

30. My solicitor was absent for part of the trial. I have been told that he was representing someone else, elsewhere.

31. The reporting of the trial was sensationalist and inaccurate. This was put to Lord Maclean who refused to take any action on it.

32. There was no evidence (no DNA, fibres or finger prints) linking me to the car or wooded murder scene. It was all verbal from McNairn.

33. The evidence of people out walking with a torch who saw the car and driver but no passenger was ignored.

34. The evidence that McNairn worked nearby and was a regular visitor to the wooded murder area was ignored.

35. The head Psychiatrist from Carstairs did several interviews with McNairn and Myself. He concluded that I couldn't have done the murder but that McNairn was capable due to his mental state at the time.

36. The Advocate Depute prosecuting, in his closing address, said that 95% of what McNairn said was lies but asked the jury to believe the 5% about wearing the white gloves. The advocate depute also asked the jury not to consider motive.

37. My defence and the prosecution both stressed the importance of who was wearing the white gloves. This was made the most important point for the jury (see para. 35 *James Casey v HMA*).

The relevancy of these additional points to the main two points

38. I contend that the jury were preparing to weigh up all they had heard and find McNairn guilty of murder, but then the judge tore apart the arguments made by my advocate. The jury then concentrated on the dismissal of my advocate's argument in relation to the white gloves to the exclusion of all the evidence against McNairn. Therefore, this completely perverse decision was made as a result of the judge's misdirection.

39. All the evidence taken from McNairn could not be relied upon at trial. *Cadder* makes reliance on the evidence contained in McNairn's confession incompatible with my right to a fair trial (both under the common law and article 6). The only evidence linking me to the car and the woodland scene came verbally from McNairn (based upon McNairn's confession). In light of

Cadder this evidence could not be lawfully used therefore there was no evidence against me in relation to the murder.

40. Please note that at my SCCRC appeal in 2011 (*James Casey v HMA* [2011] HCJAC 19) the judges used this evidence to override the clear DNA evidence that I was wearing the white gloves. The decision of the Supreme Court in *Cadder* predated my SCCRC appeal. This should at least have been argued but unfortunately was not brought up.

Signed: (James Casey, 14704 at HMP Addiewell)

Date: