

Memorialist considering there can be no doubt on the mind of any person as to which of the Detectives spoke the truth and that the fact truly was as stated by Detective Eason and here it may be stated that had this not been the case and your Memorialist entirely innocent of the crime laid to his charge it may be safely assumed that your Memorialist would never in cross examining the witnesses for the prosecution have ventured to ask so dangerous a question. That the main facts stated in this Memorial as your Memorialists statement on reply to this charge against him were admitted by the prosecutor Gardiner in his cross examination by your memorialist on the trial in the Supreme Court to be true and correct and shewing your Memorialists acquaintance with Gardiner to have been one of friendly description towards him having solely for its object the assistance of a young man representing himself to be friendless and helpless in the Colony and to advance his interests and that it was not from any motives of self interest or any thing your Memorialist had to gain from him. That Mr. G. P. Hackett one of the Stipendiary Magistrates for the City of Melbourne was applied to on the Fourteenthth of November last by Gardiner for a warrant against your Memorialist and he refused to grant the same now it is to be presumed the Magistrate fully questioned Gardiner upon the nature of the case he then represented and came to the conclusion that his statements were wholly unreliable and untrue inasmuch as he refused to grant a warrant against your Memorialist though if ever the case so stated had shown merely an attempt to commit such offence he would doubtless as was his duty have granted a warrant. That the Learned Judge in his charge to the Jury though summing up strongly against your Memorialist leaving the Jury no alternative but to find your Memorialist guilty almost desiring them to do so as being guilty of the capital offence on the Thirteenth of November (the period before referred to as to which there was no corroborative evidence and not sufficient according to the Magistrates judgment to warrant him in granting a warrant of apprehension against your Memorialist) pointed out to the Jury that there were two very peculiar features in the case one was Gardiners conduct as shewn by his own evidence which certainly was very extraordinary indeed and also that his conduct seemed to change after the crime was stated to have been perpetrated by his gang to the Police on the following day. Now your Memorialist contends that these facts should operate strongly in shewing Gardiners untruthfulness especially from his pretending that he sent himself and actually sought after the commission of the offence. The other feature is the conduct of the Police in alleging that by their continuance they brought about the commission of an offence and in conspiring with Gardiner in this the learned Judge censured their conduct in strong terms

stating it was not attempted to be denied on the part of the prosecution that the offence of the Sixteenth was brought about by the contrivance of the Detectives and that this conduct was strongly to be condemned and as long as he sat in that place he should always say it was better that crime should go unpunished than that it should be created for the purpose of punishment adding also that their conduct did not mitigate your Memorialist's guilt but it did most materially affect the value and purity of their evidence. Referring to your Memorialist's position as the time of entry into the room which is fully explained in the statement at the end of this Memorial the learned Judge also added to the Jury "The Prisoner has told you why he was in the position he was found in. Gentlemen, Is it necessary that one man should get on the top of another to look in his face?" Your Memorialist complained that such an argument coming from the Judicial bench was conclusive to the mind of the Jury as to the guilt of your Memorialist and should only have been used by an advocate for the prosecution as matter of argument that the Judge altogether exceeded his functions in thus becoming his prosecutor and in his arguing the case most strongly against your Memorialist a course which he did actually take and which was apparent to and was matter of comment to many persons present in Court on the trial so much so that the Jury were not left to a full and free exercise of their judgment though unfortunately from the nature of this case it was ^{not} fully reported your Memorialist is well assured that if it had been fully laid before the Public it would have been before this taken up and freely commented on further the learned Judge stated to the Jury "The Prisoner has defended himself with great ability and ingenuity He has evidently received a high education and has had great experience where he obtained it from is not for me to say but it is my duty to tell you that that ability and ingenuity must not avail him in this place you must only treat the defence as an ingenious lie" all which your Memorialist will always contend had the effect of inducing and coercing the Jury in finding your Memorialist guilty further the learned Judge told the Jury they might consider the evidence of the Detectives of the Friday night the sixteenth to be corroboratory of Gardiner's evidence of what he stated took place on the Monday night the Thirteenth which your Memorialist considers an unjust straining of the Law against him inasmuch as if Gardiner's evidence as to the Thirteenth is not admissible by Law from want of corroboration no subsequent facts or evidence could make it admissible that the evidence of the Detectives against your Memorialist as to what they stated took place between your Memorialist and the Prosecutor Gardiner whilst lying in wait and before bursting into the room is utterly untrue and could be easily shown to be

untrue by an examination of the premises where they are stated to have occurred namely the room Number Three on the first floor of Courays Hotel where your Memorialist was at that time residing and which is situate immediately over the bar of the Hotel with the street Lamps in front of the window and shining brightly into the room - The door was fastened by a little bolt the latch being out of order and the door being thus shut and the room separated from the rest of the rooms and the passage by a brick partition wall at least twenty inches thick it would be impossible for any person while in the place the Detectives state they were to hear what conversation was being held in the room where your Memorialist was your Memorialist therefore charges the Detectives with wilful and deliberate perjury in imputing to your Memorialist the language they do it being quite impossible for them to have heard what was said Your Memorialist also charges the Detectives with inciting Gardiner to force and betray your Memorialist into the appearance of guilt and to commit perjury That several comments arise on the applicability of the evidence of the Doctor namely the witness Alexander Fisher who was examined at the Police Court and the extent it might be relied on in support of the evidence for the prosecution in this case but as the learned Judge who tried this case put it aside beyond the notice of the Jury directing them they ought to discard it from their minds in considering their evidence Your Memorialist considers he need not make any lengthened comments on the evidence attention might however be called by your Memorialist to the fact that the Doctor admitted in cross examination at the Police Court that he said nothing in the examination of Gardiners person that could have led him to infer that this crime had been committed had he not been told so also that the appearances stated by him might be incidental to any one that they did not indicate the pain complained of and that there might be many natural causes to account for them that the only organ that could give evidence of the crime was the Splaneter which he found in a perfectly natural state and that if the subject were suffering pain at the time of the examination caused by the alleged offence he should expect to find the Splaneter dilated which was not so in this case That it is undoubtedly astounding that a man could be found upon whom this crime had not been perpetrated to submit his person to such an examination yes such is the case in this instance the fact is eminently calculated to prejudice the minds of all men That to draw the attention of your Excellency to the dates of the above case against your Memorialist it is here stated that Monday the twelfth day of November one thousand eight hundred and sixty was the night of the Ship being on fire in the Bay

and the period from which Gardiner's evidence commences the Thirteenth of November is originally the date of the alleged offence but not the one the subject of the Indictment against your Memorialist. During the Fourteenth, Fifteenth and Sixteenth days of November the Prosecutor Gardiner was in communication with the Police during all which time they did not take him for examination to the Doctor. The Sixteenth day of November is the day on which the Indictment is laid on the Seventeenth day of November Gardiner was examined by the Doctor from which your Memorialist supposes the Detectives intended to charge your Memorialist with the commission of the crime in question on the Sixteenth day of November and as they had been in communication with Gardiner since the Fourteenth why had they not taken him for examination by the Doctor. As to the alleged occurrence of the previous night namely the Thirteenth may it not be reasonably inferred that when they learnt from the Doctor that they had failed to impose on him and that his evidence would not establish the charge for the Sixteenth and that they then agreed to fix it on the Thirteenth a period too remote probably for medical testimony to find traces of the alleged crime. That in analysing Gardiner's motives in this most base proceeding it is impossible for any honest mind to enter into the feelings of one that is dishonest but the point is obvious to any dispassionate observer if his evidence of the proceedings of the nights of Monday and Tuesday the Twelfth and Thirteenth is to be believed added to the fact of his getting Campbell to follow your Memorialist and Gardiner unknown to your Memorialist for Seven hours on the latter night he Gardiner must have come to your Memorialist on the Thirteenth with the full intention of offering himself as a victim. Your Memorialist sincerely believes it to be more consistent with a depraved nature that his whole statement is false created for some ulterior and corrupt purpose and that the truth will yet be revealed. That subsequent to the conviction of your Memorialist evidence of a most important character has transpired which is most favorable to your Memorialist inasmuch as it shews that the evidence of Gardiner against your Memorialist was by his own confession and acknowledgement wholly false and untrue and it also shews the corrupt motives that actuated his most false and atrocious accusations against your Memorialist. The evidence transpired in the following manner. While your Memorialist was being apprised when in the Central Gaol at Melbourne in or about the month of April last of the fact that your Excellency had been pleased to commute the sentence of Death which had been passed upon him at the trial to one of Fifteen years imprisonment the first

three to be passed in Irons your Memorialist was so appalled by what appeared to him the severity of the sentence knowing and acutely feeling as he in truth did his entire innocence and the grievous injustice of the prosecution against him all the energies bodily and mental of your Memorialist became completely paralyzed and your memorialist became and remained a long time insensible and the fact attracting the attention of the prisoners one of them learning the nature of the crime alleged against him (your Memorialist) afterwards made a most important statement to him. his name was Rufus Davis a colored man who informed your Memorialist in the presence of some of the authorities at the Central Gaol that he was there confined under sentence for some minor crime being so far as your Memorialist can recollect for contempt of Court and that he left at Daisy Hill Amherst and that some two months previously his mate came up to him with another man and they were continuing a conversation already commenced Davis describing the other man in a manner leading your Memorialist to identify him with Gardiner the Prosecutor in the case against him and the conversation being still addressed to Davis' mate Davis heard him state as follows "I have just come from Melbourne this is the fourth day from Melbourne and the first day I have appeared by daylight having travelled by night three nights" on being asked why he said "my reason for so doing is that I have been engaged in the prosecution of a man who was about to set up a boiling down establishment on the River for so doing I have had to leave Melbourne in a hurry and have travelled by nights for fear of being taken as I am afraid of another prosecution in consequence of the evidence I gave I received some money for the evidence I gave which was untrue and expected more but did not wait longer in Melbourne I wish you would tell me where I could get on a Station" that the name of the mate of Rufus Davis who also heard the above statement is Tho^s. Smith and both Davis and Smith can be found and will give their evidence to the above effect at any time That the following is a truthful and correct statement in every particular and respect of the way in which your Memorialist first became acquainted with Gardiner and of all that transpired between them premising that Gardiner's statement that the first time he became acquainted with your Memorialist was on the Monday the twelfth day of November one thousand eight hundred and sixty whereas the truth was that for three weeks previously to that time your Memorialist had been in the habit of meeting and talking with him and he had at the period Gardiner speaks of

become well acquainted with him.

"My first acquaintance with Gardiner was a casual meeting in the Vestibule
"of the Theatre Royal, he told me then, that he had lately arrived by the Aldinga
"and that he was disappointed he was not retained on board in the situation he had
"filled coming out "Ship's Carpenter" After this I your Memorialist was in the
"habit of meeting him frequently and each time I became more interested in
"him from observing his increased dejection and lowness of Spirits at his inability
"to obtain employment here On this Monday night the Twelfth of November
"alluded to by Gardiner and stated to be the first time we had met. I had been
"at the Theatre and after the performance was over your Memorialist went for a few
"minutes into the Albion Hotel and on coming out met Gardiner at the door who
"spoke to me. We then walked on in conversation to Elizabeth Street as I was
"going to Courroy's Hotel I asked him to come into the Glasgow Hotel and have
"a glass of Ale, he did so on coming out we saw in the sky the reflection of a
"large Fire, Gardiner said let us go and see where it is, we went and on getting
"into William Street near the Exhibition we found the light proceeded from
"a ship on Fire so we agreed to go on to Batmans Hill to look at it, when we
"left the Hill Gardiner wanted to accompany your Memorialist back again to
"towards Courroy's Hotel where I was living and did come part of the way as far
"as the corner of Bourke Street and Elizabeth Street. The Post Office clock was
"then striking Two and I said to him do you hear how late it is you will perhaps
"have some difficulty in getting in at your lodgings, if you like to come with me
"you are welcome to share my bed and I can always get in without disturbing any
"one as there is a way left open for the boarders he however preferred trying to get in
"at his own Lodgings and left me. Now it may strike Your Excellency as remarkable
"that I should have asked Gardiner to share my bed but my occupation for
"nearly Six years in this Colony has been driving Hock. Where it is our habit
"to travel with a light part in or under which we make a general Bed for two
"or three as the case may be and indiscriminately sleep together Now I had learned
"from Gardiner that he was the son of a Glasgow Merchant and I found him
"rather an amusing and intelligent companion far above these I have been often times
"compelled to associate with of late years, Therefore however extraordinary it may seem to
"Dwellers in Town to sleep two in a bed in the way I describe my ideas as a Bush
"man on that subject rendered the occurrence a perfect matter of indifference to me
"It is the practice of Bushmen oftentimes to sleep two or three under the same
"set of Blankets and the bed I occupied at Courroy's was much more commodious

"than one I have often been compelled to sleep in one of three for weeks together,
"However it seems that my invitation to Gardiner that night (to whom as he
"was but recently in the Colony) the habits of Bushmen would be unknown
"must have first suggested the diabolical designs which he afterwards put into
"execution. He came to me in Queen Street on Tuesday and told me of his vain efforts
"to get employment he was very much dispirited I felt for his situation and prom-
"ised to use my endeavours to procure him employment which as I was about entering
"into an arrangement for carrying on a large boiling down Establishment I thought
"it probable I should be able to give him ^{work} myself and I said if I succeeded in carry-
"ing out my views I would take him with me to help to bring down a flock of Sheep
"and as he seemed so low spirited I asked him to spend the evening with me and
"go and see the American Children at the Theatre he said he should be glad
"to come but that if he went he must get me to allow him to stop all night with me
"as his Landlord would not wait up for him. I consented and after the Theatre
"he accordingly went to my Hotel with me and shared my Bed that night,
"The next morning on leaving I arranged for him to call and see me on the Friday
"morning by which time I told him I should know definitely whether I could give
"him employment or not and in case I should hear of any thing to suit him in
"the meantime I took down his address in the my pocket book so that I might
"communicate with him I had previously given him my own name and address
"on Friday according to our arrangement He came and as I was still unable to
"give him any answer as to employment and he was consequently much dispirited
"I offered to take him to the Theatre and he seemed glad to have the opportunity
"of going remarking however as before that if he went he should be obliged also to remain
"the night to which I made no objection We went to the Theatre came home
"and went to bed about 12 o'clock on this night the Memorialist remarked two Detectives
"several times passing and repassing him both in the Theatre and elsewhere your
"Memorialist knew them both perfectly well by sight and had been acquainted
"with one of them (Eason) for some 4 years and the other Edwards about half
"as long, on our return from the Theatre both of these men were in the Bar
"at Courroy's Hotel. Now if your Memorialist had had any guilty know-
"ledge of Gardiner on the last night he was with him, or had any guilty inten-
"tion towards him on this night is it not reasonable to suppose that he would
"have associated the movements of the Detectives with himself. But your
"Memorialist went to bed as innocent of any evil intention and as unmindful
"of Detectives as any Citizen in Melbourne Immediately after retiring to

"bed the witness Gardiner commenced speaking in terms of the most extravagant
"gratitude for what Your Memorialist had done for him in endeavouring
"to obtain him employment on his repeatedly reiterating his thanks in what
"your Memorialist thought a most extraordinary and unnatural manner
"Your Memorialist was induced by his most strange behaviour (and as the
"Room was perfectly light from the Street Lamp burning immediately in front
"of the window) to sit up in Bed when on looking Gardiner in the face and
"asking what he meant by such extraordinary conduct, He suddenly threw
"his arms round your Memorialists drew him on his face knocked off the
"bed clothes and gave the signal agreed on to the Detectives who in an
"instant rushed into the Room whereupon one of them said to Gardiner has
"he done it and Gardiner said "Yes Oh take him off me Your Memorialist
"was then taken into custody and upon his trial upon the sole evidence
"of the witness and accomplice Gardiner was and certain evidence given by
"two Detectives Alexander Eason and Edwards convicted and sentenced
"to death such sentence of death being afterwards commuted to a sentence of Imprison-
"ment for 15 years in the Gad of the Colony the first three years in irons "

Your Memorialist and Petitioner therefore most humbly
prays that Your Excellency will be graciously pleased to
take the whole of the facts comprised in the above Memor-
ial into consideration and Your Memorialist most solemnly
asseverating his entire innocence of the charge made against
him that your Excellency will be pleased to direct that
a full and free pardon and entire remission of the sentence
under which Your Memorialist is now suffering may
be granted to him and that he may be set at liberty
And your Memorialist will ever pray &c &c

G. T. Bateson

By his Solicitor
J. H. H. H.

83 Swanston Street
Melbourne

3735.

22 Aug/61.

The Hon ^{all} Chief Justice

B. 1261

Reports upon the verdict in the
Case Reg. v. Bateson (sodomy)

I beg to return the within papers
to His Excellency and to state
that I see no reason for any
interference in the case.

H. John A. ...

7 Sept 1861.

348/61.

vide Minutes on ⁶3935.

4119/67.

B. 12/61

Crown Law Offices,

MELBOURNE, 21 Augt 1861.

I have been requested to advise upon this petition of George Waterman and as I had not the opportunity of hearing the opinion expressed by the Honourable the Chief Justice to the Executive Council, upon the case, I should be much obliged if His Honour would inform me as to whether

41149/67.
" 177/61.

he is satisfied with
the verdict of the jury

The only doubt I have
on the subject is with
regard to the latter portion
of the evidence of the
witness Gardner (vide
first four lines of page
of notes of evidence) from
which it appears to me
that an attempt
only was proved.

N. de Aspinall

He is satisfied with
the verdict of the jury
The only doubt I have
on the subject is with
regard to the latter portion
of the evidence of the
witness Gardner (vide
first four lines of page
of notes of evidence) from
which it appears to me
that an attempt
only was proved.

N. de Aspinall

3735-13/1261

In answer to the question of the
Honorable the attorney general as
to whether I am satisfied with the
Verdict of Guilty the jury returned
in the case of the Queen v George
Bateson tried before me on the 17th
December last for Sodomy, I have
the honor to state that I am
perfectly satisfied with the Verdict

The evidence of the Commission
of the Capital offence is that
which relates, to the occurrences
on the second interview (bottom of
page 2 and commencement of
page 3 of copy of notes of evidence)
not to that which took place on
the 1st last

Wm. Russell

Chamber
Supreme Court
22 August 1861.

R. 77/01

3 Little Collins St West

18 March 1881

Sir

I have the honor to ack^d rec^d of your letter that Memorial in case of Bateson was forwarded for report of Attorney General -

Being informed there that the Report has not yet been sent in and learning also that the sentence awarded by the Council will be carried out by Bateson's removal from the central Gaol tomorrow,

I beg to ask on the part of the Memorialist that directions may be given by His Excellency & the Hon^{ble} members of the Council that the sentence so far as the "wrens" are ment^d may not be carried out until at least it is determined if any alteration in the sentence will be made on receipt of the Atty. Gen^l's report -

I have the honor to be Sir

Yrs very obed^t Serv^t
H. W. H. H. H.

Refer to the Attorney General for decision.
Refer to the Attorney General for decision.
19.3.81

Capt. J. J. J.
Threat sent to
His Excell. Sir M. Barkly

R. 144/01

Mr. J. B. Pimm
Melbourne
Victoria



MELBOURNE
MA 1854

Refer the Memorial with the previous papers to the Mr. Justice
who must decide how far it is politic to reopen the enquiry into the
case after the Chief Justice has reported that he is perfectly satisfied
with the verdict. JMS 9/4/62

Refered accordingly R. J. Timmins M.

9/4/62
1500

R. 223/62

13 Swanston Street
9th April 1862

In the matter of the Petition
of G. J. Bateson -

I have the honor to forward
copy Memorial and beg to
ask, as the most urgent request of
the unfortunate Prisoner that
the subject may be referred for
consideration and reports to the
newly appointed Minister of
the Crown viz: the Minister
of Justice - and that the same
such steps may be taken as to
His Excellency shall seem just

I have the honor
to be Sir
Yours most Obedtly
J. M. Wigley

V. H. Timmins Esq
Private Secretary
Solicitor
William Street

Refer with the Petition to the Hon^{ble} the Atty Genl for committal
Sentence of Death was never recorded against Prisoner Bateson
a no communication was decided on pending the progress of the trial
to remove doubts as to the Governor's power in such matters, - but it would
be well now to settle the point - both in respect to this, & another similar
case. Referred accordingly by J. F. Manning.

J. F. Manning
28/7/61

B
12/8/61

1144/61.

3 Little Collins St West
Melbourne
23 July 1861

I have the honor to forward
the Petition and memorial of
George Bateson - now under
sentence of death - for the
consideration of His Excellency
and I beg to ask the favor
of any communication in the
matter being made to me
as the agent or attorney of the
party -

I have the honor to be
Sir

Your most Obedt Servt
J. F. Manning

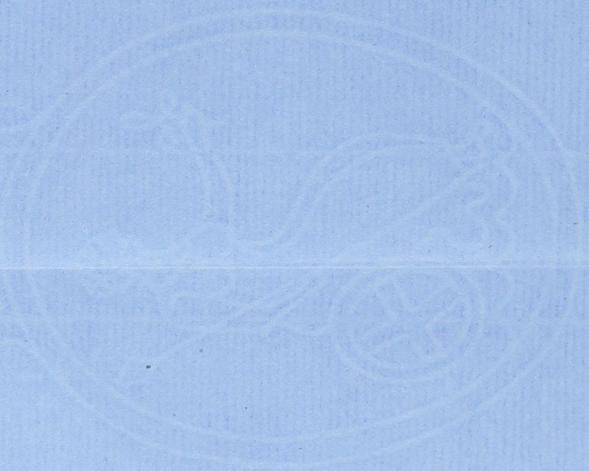
J. F. Manning
Private Secretary
to His Excellency the Governor of Victoria

To His Excellency
Sir Henry Barkly. R. C. B.
Governor in Chief, Captain General
and Vice Admiral of Victoria.

Memorial and Petition

of
George Paterson

A. Prisoner in Her Majesty's Gaol
at Melbourne under sentence of
Death



B.
12/61.

To his Excellency Sir Henry Barkley K. C. B.
Governor in Chief. Captain General and
Vice Admiral of Victoria

The Memorial and Petition of

George Bateson. a Prisoner
in Her Majesty's Gaol under
Sentence of death for the
Alleged Commission of an
unnatural Crime.

Sheweth that Your Petitioner wholly
denying and repudiating the commission of the atrocious
crime imputed to him, the very idea of which he can only
contemplate with the greatest horror and disgust And in the full
consciousness of his complete and entire innocence of the Guilt
laid to his charge, bitterly feeling the position in which a mistaken
view of the entire case by the learned Judge has (by a most
unjust sentence) placed him

Humbly prays that your Excellency will be graciously pleased
to reconsider the case and in justice to an innocent person
to read the Evidence given on your Petitioner's Trial and compare
the same with the statement of the entire Truth of the matter
which your Petitioner now submits for Your Excellency's gracious
consideration, together with a recital of the following
facts relative thereto -

Praying also that Your Excellency will be pleased
to consider the wholly unimpeachable and unapproachable
character recited and borne by your Petitioner as testified
by the several Merchants and Gentlemen of Melbourne
whose names appear at the foot hereof.

no marks
to be made
on this
document

(1)

The charge against your Petitioner being easily made but one of the most difficult at all times to disprove, is more especially so in the present instance where many circumstances (in themselves not at all uncommon and easily accounted for) give a certain colouring of truth to the statement made by the Prosecutor and Accomplice Gardiner (so far as the possibility of an attempt to commit the unnatural crime being practicable) of which he has most diabolically availed himself to trump up a charge of the most filthy and revolting nature against your Petitioner with the view to extort money from him, to accomplish this, your Petitioner therefore prays that your Excellency will be graciously pleased to consider and participate in the unnatural offence.

First (1st) - That the only evidence in support of the Felony having been committed, is the bare assertion and wholly unsupported testimony of the accomplice and sole witness Gardiner, and that neither the evidence of the Surgeon or that of either of the detectives, in the least affect or in anywise tend to corroborate or confirm his statement, or help to prove his bare assertion that the Capital Offence was actually perpetrated however much the words said to have been spoken by your Petitioner to Gardiner, as stated by the Detective Officers, and the rest of the evidence might be presumptive of the intent to commit the offence and of that only.

2nd - That to support a conviction for the Capital crime it is indispensable that if an accomplice appear as a witness his testimony (should not only be always received with caution and even doubt), but to be of any value it is absolutely necessary that it should be confirmed by some other person - This has not in any way been done nor is there even any indirect evidence to show more than an attempt to commit the offence save by the consenting Party's own statement and unsupported assertion consequently, your Petitioner could not be legally convicted of the Capital offence, and if found guilty of a punishment for

any crime it should necessarily be the less one - viz. The
Attempt of which however your petitioner was in truth and
reality wholly guiltless, as will appear by this Statement -
3rd That there is a material discrepancy in the Statements made
by the Detectives and that by the witness Gardiner as to the
Conversation said to have taken place on the Friday Night,
between your petitioner and the witness Gardiner, The latter in his
Evidence, never mentioning or in any way alluding to the words
said to have been spoken and overheard by the Detectives, which
words, had they been used might be presumptive of a wish
or intention on the part of the Speaker (coupled with the rest
of the evidence) to endeavour to commit the offence although
nothing adduced in Evidence either by the Detectives or Surgeon
would lead to the belief or even conjecture that such attempt
had been carried into effect

But Your Petitioner in the most unqualified manner most
religiously and solemnly declares that no such expression, or words
to that effect as those imputed to him by the Detectives were used or
spoken by your Petitioner at any time And that in thought
word and deed your Petitioner is alike wholly guiltless of the
enormity of which he is put forth to the world as being guilty.

4th That the following is a truthful and correct Statement
in every particular and respect of the way in which Your
Petitioner first became acquainted with the witness Gardiner
and of his future intimacy with him. Your excellency will
not fail to remark that Gardiner in his Evidence states
that the first time ^{your Petitioner} ~~you~~ met him was at 12 O'clock at
Night on Monday the 12th of November and would lead you
to infer that he knew nothing whatever previously ^{of your Petitioner}. Whereas for
some 3 weeks or more previous to that time ^{of your Petitioner} I had been in
the habit of constantly meeting and talking with him and
had in short at the period he speaks of become intimately
acquainted with him "My first acquaintance with Gardiner
was a casual meeting in the Vestibule of the Theatre Royal
"he told me then that he had lately arrived by the Aldinga
"and that he was disappointed he was not retained on

Petitioner's own
Statement -

"board the "Aldinga" in the situation he had filled coming out
"Ships Carpenter" after this I was in the habit of meeting him
"frequently and each time that I saw him, I became more
"interested in him from observing his extreme dejection and lowness
"of spirits at his inability to obtain employment here. On this
"Monday Night (the 12th of November alluded to by Gardiner
"and stated by him to be the first time he had met me I
"had been at the theatre and after the performance was over I went
"for a few minutes into the "Albion Hotel" as I was coming out I
"met Gardiner at the door of ~~the~~ ~~the~~ who spoke to me - We
"walked on in conversation to Elizabeth Street, as I was going to
"Conroy's Hotel, I asked him to come into the Glasgow Hotel and
"have a glass of ale, he did so, on coming out we saw in the sky
"the reflection of a large fire, "Gardiner said let us go and see where
"it is - he went and on getting into Williams Street near the Exhibition
"he found the light proceeding from a ship on fire. So we agreed
"to go on to "Batmans" Hill" to look at it, When we left the Hill
"Gardiner wanted to accompany me back again (towards Conroy's
"Hotel where I was living, and did come part of the way, as far
"as the corner of "Bourke" and "Elizabeth Streets" The Post office
"Clock was then striking "2" and I said to him, do you hear
"how late it is, You will perhaps have some difficulty in getting in,
"at your lodging, if you like to come with me You are welcome
"and I can always get in without disturbing any one, as there
"was a way left open for the boarders. he however preferred trying to
"get in at his own lodgings and left me. Now it may strike your
"Excellency as remarkable that I should have asked Gardiner
"to share my bed, but my occupation for nearly six years in the
"Colonies, has been diving Hock, when it is our habit to travel with a
"light Cart, in or under which we make a general bed for two or
"three persons as the case may be and indiscriminately sleep together.
"Now I had heard from Gardiner that he was the son of a Glasgow
"Merchant and I found him rather an amusing and intelligent
"Companion far above those I have been often times compelled to
"associate with of late years - Therefore however extraordinary it may
"seem to dwellers in Town to sleep two in a bed in the way I

describe, my ideas as a Bushman on that subject rendered the
occurrence a perfect matter of indifference to me - It is the custom
of Bushmen oftentimes to sleep two or three under one set of Blankets
and the Bed I occupied at Conroy's was much more commodious
than one I have often been compelled to sleep in - One of three,
for weeks together - However it seems that my invitation to
Gardiner that night (to whom as he was but recently in the Colony
the habits of Bushmen would be unknown must have first
suggested the diabolical design which he afterwards put in execution -
He came to me in Queen Street on Tuesday and told me of his
vain efforts to get employment, he was very much disappointed and
I felt for his situation and promised to use my endeavours
to procure him employment which as I was about entering into an
arrangement for a boiling down establishment and that I
~~arrangement for~~ carrying out my views I would take him with me
to help bring down a flock of sheep and as he seemed so low
spirited I asked him to spend the evening ^{with me} and go to see the
American children, at the Theatre He said he should be glad to
come but that if he went he must get me to allow him to stop
all night with me as his Landlady would not ~~let him~~ wait
up for him, I consented and after the Theatre he accordingly went
to my Hotel with me and shared my bed that night. The next
morning on leaving I arranged for him to call and see me on the
Friday following by which time I told him I should know definitely
whether I could give him employment or not, and in case I should
hear of anything to suit him in the meantime I took down his
address in my pocket book so that I might communicate with him
I had previously given him my own name and address - On Friday
according to agreement, he came, and as I was still unable to give
him any definite answer I offered to take him to the Theatre and
he seemed glad to have the opportunity of going, remarking however as
before, that if he went he should be obliged also to stay the night to
which I made no objection - We went to the Theatre, came home and
went to bed about 12 o'clock - On this night your Petitioner remarked
the two detectives several times and knew them both perfectly well
by sight and had been acquainted with "Eason" personally ~~years~~
four years and the other Edwards about half as long, On our

return from the Theatre, both of these men were in the Bow at Conroy's Hotel. Now if Your Petitioner had any Guilty knowledge of Gardiner on the last night he was with him or had had any guilty ~~knowledge~~ intention towards him on this night, is it not reasonable to suppose that he would have associated the movements of the Detectives with himself? But Your Petitioner went to bed as innocent of any evil intention and as unmindful of detectives as any citizen in Melbourne, Immediately after retiring to bed the Witness Gardiner commenced speaking in terms of the most extravagant gratitude for what Your Petitioner had done for him in endeavouring to obtain him employment. On his repeatedly reiterating his thanks in what your petitioner thought a most extraordinary and unnatural manner, Your petitioner was induced by his most strange behaviour (and as the Room was perfectly light, from the street lamp burning immediately in front of the window) to sit up in the bed, when on looking Gardiner in the face and asking him what he meant by such extraordinary conduct he suddenly threw his Arms around Your petitioner and drew him on his face, kicked off the bed clothes and gave the signal afraid on to the Detectives who in an instant rushed into the Room. Whereupon one of them said to Gardiner "Has he done it" and Gardiner said "Yes take him off me" Your Petitioner was then taken into Custody, And upon his trial upon the sole evidence of the Witness and Accomplice Gardiner was found guilty of the Capital Offence and now lies under Sentence of Death.

Your Petitioner therefore prays that Your Excellency will be graciously pleased to take the above Statement into consideration and to grant Your petitioner a full pardon and remission of the sentence so passed upon him or otherwise that your Excellency will be pleased to commute the sentence to such an extent as may be warranted by the facts above appearing or that Your Excellency will make such order and direction in the above matter as to your Excellency may seem meet.

And Your Petitioner as in duty bound will ever pray to

George Bateson
By his Attorney
J. H. Hargreaves
3 Little Collins St. West.

John P. A. Simmons

Private Secretary

H. His Excellency Sir. Henry Barkly. K. C. B.

Government House
William Street.

11/11/62
To His Excellency
Sir Henry Barkly
Governor of Victoria

Memorial and Petition
of G. F. Bateson now a
Prisoner under sentence
the Penitentiary Stockade

Let me have the report
and the notes referred to
in Mr. Colquhoun's memorandum

21/11/62

I have read the documents
and the judge's notes - and
in reply the objections were

partly of begging ^{must believe} the same in
Bateson's part, the same in
my conviction. There are no
facts to impeach the character
of any man present any further
they would be found in the
Magazine

83 Sturminster Street

with a charge against the
prisoner. Therefore will not
be removed from the
penitentiary Stockade
His Excellency

(Mr. Colquhoun)

Sturminster Street

11/11/62

Mr. Colquhoun informed with reference to the
particulars that as the prisoner is a
prisoner cannot be removed from the
penitentiary Stockade; His Excellency
will decline to so open the case.

21/11/62