

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAY 29 2013

APPEAL FROM WILLIAMSBURG COUNTY S.C. Supreme Court
COURT OF COMMON PLEAS

HONORABLE GEORGE C. JAMES, JR., CHIEF ADMINISTRATIVE JUDGE

CASE NO. 2012-CP-45-00197

THE STATE RESPONDENT,
MICHAEL D. MCFADDEN #126806 . . . V. APPELLANT.

NOTICE OF APPEAL

RECEIVED

MAY 24 2013

MICHAEL D. MCFADDEN #126806 APPEALS THE JUDGEMENT OF THE SC Court of Appeals
HONORABLE GEORGE C. JAMES, JR. DATED APRIL 21, 2013. APPELLANT
RECEIVED WRITTEN NOTICE OF ENTRY OF THIS JUDGEMENT ON MAY 9, 2013.

OTHER COUNSEL OF RECORD:

ATTY. DAVID SPENCER
ASST. DEPUTY ATTY. GENERAL
P.O. Box 11549
COLUMBIA, S.C. 29211-1549

S/ Michael D. McFadden
MICHAEL D. MCFADDEN #126806, PRO SE
AILENDALE CORR. INST. - F5B227
P.O. Box 1151
FAIRFAX, S.C. 29827

RECEIVED

IN THE STATE OF SOUTH CAROLINA
THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF COMMON PLEAS

HONORABLE GEORGE C. JAMES, JR., CHIEF ADMINISTRATIVE JUDGE

CASE NO. 2012-CP-45-00197

THE STATE RESPONDENT,
MICHAEL D. MCFADDEN #126806 V. APPELLANT.

PROOF OF SERVICE

RECEIVED
MAY 24 2013

SC Court of Appeals

I CERTIFY THAT I HAVE SERVED THE NOTICE OF APPEAL
ON ATTORNEY DAVID SPENCER BY DEPOSITING A COPY OF IT IN
THE U.S. MAIL, POSTAGE PREPAID, ON MAY 17, 2013, AND
ADDRESSED TO SOUTH CAROLINA ATTORNEY GENERAL OFFICE, POST
OFFICE BOX 11549, COLUMBIA, SOUTH CAROLINA 29211-1549.

MAY 17, 2013
FAIRFAX, S. C. 29827

S/ Michael D. McFadden
MICHAEL D. MCFADDEN #126806 PAO SC
ALLENDALE CORR. INST. - F5B227
P.O. Box 1151
FAIRFAX, S. C. 29827

LEGAL MAIL

MAY 17, 2013

THE HONORABLE KENNETH A. RICHSTAD
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, S.C. 29211

RE: MICHAEL D. McFADDEN, #126806 V. STATE OF SOUTH CAROLINA
CASE NO# 2012-CP-45-00197

DEAR MR. RICHSTAD:

ENCLOSED FOR FILING IS A NOTICE OF APPEAL IN THE ABOVE ENTITLED CASE. ALSO ENCLOSED ARE THE FOLLOWING:

- (1). PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENTS.
- (2). A COPY OF THE JUDGEMENT TO BE CHALLENGED ON APPEAL.
- (3). APPELLANT'S ARGUMENT IN ACCORDANCE WITH RULE 243, SCACR.
- (4). ORDER FOR ENTIRE TRANSCRIPT OF RECORD

RECEIVED

MAY 24 2013

SINCERELY,

SC Court of Appeals

CC:

ATTY. DAVID SPENCER
ASST. DEPUTY ATTY. GENERAL
P.O. BOX 11549
COLUMBIA, S.C. 29211-1549
FOR RESPONDENTS

SI Michael J. McFadden
MICHAEL D. McFADDEN #126806 PRO SE
AHLENDALE CORR. INST. - F5B227
P.O. BOX 1151
FAIRFAX, S.C. 29827

LEGAL MAIL

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF COMMON PLEAS

HONORABLE GEORGE C. JAMES, JR., CHIEF ADMINISTRATIVE JUDGE

CASE NO# 2012-CR45-00197

THE STATE RESPONDENT,
MICHAEL D. MCFADDEN #126806, V. APPELLANT.

ORDER ENTIRE TRANSCRIPT OF RECORD

THE UNDERSIGNED ORDERS / REQUESTS A TRANSCRIPT OF THE
ENTIRE RECORD.

ATTY. DAVID SPENCER
ASST. DEPUTY ATTY. GENERAL
P.O. BOX 11549
COLUMBIA, S.C. 29211-1549
ATTORNEY FOR RESPONDENT

S/ Michael D. McFadden
MICHAEL D. MCFADDEN #126806 PRO SE
AILENDALE CORR. INST. - F5B227
P.O. BOX 1151
FAIRFAX, S.C. 29827

LEGAL MAIL

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. IN ACCORDANCE WITH RULE 243 (C) SCACR, THE APPELLANT SAYS THAT HIS APPLICATION IS NOT SUCCESSIVE OR BARRED BY THE STATUTE OF LIMITATIONS. MR. PRESSLEY FILED HIS AFFIDAVIT ON JANUARY 31, 2012. THE RESPONDENTS ADMIT IN THEIR ORDER OF DISMISSAL THAT THE APPELLANT FILED HIS POST-CONVICTION ACTION ON APRIL 12, 2012, WHICH IS WELL WITHIN THE ONE YEAR STATUTE OF LIMITATIONS REQUIRED FOR AFTER-DISCOVERED EVIDENCE.

2. ARRESTING OFFICERS FAILED TO DISCLOSE THE INFORMATION CONTAINED IN MR. PRESSLEY'S AFFIDAVIT, WHICH A REASONABLE JURY HEARING THIS INFORMATION MAY HAVE DECIDED DIFFERENTLY AT TRIAL. THE AFFIDAVIT OF MR. KEITH PRESSLEY HAS GONE UNCONTRADICTED, AND THE APPELLANT CONTENDS THAT THIS INFORMATION WARRANTS A NEW TRIAL IN ORDER TO CORRECT AND FURTHER PREVENT A MANIFEST MISCARRIAGE OF JUSTICE. FULLER V. ATTORNEY GENERAL OF STATE OF ALABAMA, 36 F. SUPP. 2d 1323 (N.D. ALA. 1999); STATE V. ALFONSO BLANCO, ALMA "PONCHO", 1997 WL464745 (TEX. APP. CORPUS CHRISTI, 1997), HERRERA V. COLLINS, NO. 91-7328, CERT. GRANTED, 502 U.S. 1085, 112 S. CT. 1074, 117 L. ED. 2d 279 (1992). (HOLDING THAT EVIDENCE OF INNOCENCE WARRANTED FURTHER INQUIRY.)

3. THE APPELLANT REQUESTED AND WAS DENIED AN EVIDENTIARY HEARING INTO THE MATTER BY THE LOWER COURTS.

FUNDAMENTAL FAIRNESS ENTITLES INDIGENT DEFENDANTS AN ADEQUATE OPPORTUNITY TO PRESENT THEIR CLAIMS FAIRLY WITHIN THE ADVERSARY SYSTEM. ALKE V. OKLAHOMA, 470 U.S. 687 (1985), PRUITT V. STATE, 310 S.C. 256, 423 S.E.2d 128.

LEGAL MAIL

JUDGE MADE A GENERAL RULING ON THE ISSUES, BUT DID NOT ADDRESS THE SPECIFIC ARGUMENT RAISED BY THE APPELLANT. FLOYD V. FLOYD, 365 S.C. 56, 615 S.E.2D 465 (S.C. APP. 2005), TOWNSEND V. SAIN, 372 U.S. AT 312, 83 S. CT. AT 756, KEENEY V. TAMAYO-REYES, 112 S. CT. 1715 (1992), 321 U.S. 114, 116, 118, 64 S. CT. 448, 449, 450, 88 L. ED. 572 (1944); HAWK V. OLSON, 326 U.S. 271, 278-279, 66 S. CT. 116, 120, 90 L. ED. 61 (1945); HOLIDAY V. JOHNSTON, 313 U.S. 342, 351-354, 61 S. CT. 1015, 1018, 85 L. ED. 1392 (1941), WALKER V. JOHNSTON, 312 U.S. 275, 285-287, 61 S. CT. 574, 578-579, 85 L. ED. 830 (1940); MOORE V. DEMPSEY, 261 U.S. 86, 92, 43 S. CT. 265, 267 L. ED. 543 (1923).

4) THIS JUDGEMENT WAS MADE TO DISMISS CIVIL CASE # CLA. 2012-CP-45-00197. THE APPELLANT HAS FILED NO POST-CONVICTION IN REGARDS TO THIS CASE NO#, NEITHER CAN THE RESPONDENTS PRODUCE A POST-CONVICTION APPLICATION IN REGARDS TO THIS CASE NO#. THE APPELLANTS POST-CONVICTION CASE NO# IS 2012-CP-45-0197, WHICH SPECIFICALLY ADDRESSES CLAIMS OF NEWLY DISCOVERED AND AFTER-DISCOVERED EVIDENCE. THE JUDGEMENT WAS NOT RENDERED IN REGARDS TO THIS CASE NO#. THE RESPONDENTS TOOK IT UPON THEMSELVES TO LABEL A "MOTION TO BE REMOVED FROM THE SEX REGISTRY" AS A POST-CONVICTION RELIEF, WHICH WAS IMPROPER, BEING THAT DECLARATORY JUDGEMENT IS THE PROPER PROCEDURE IN THAT MATTER. THEREFORE, THE RESPONDENTS ERRED IN THAT REGARDS AND THE JUDGE RULED ON THAT ERROR INCORRECTLY.

5) ATTACHED IS A COPY OF THE AFFIDAVIT SUBMITTED BY

LEGAL MAIL

KEITH PRESSLEY. UNCONTRADICTED AFFIDAVITS ARE VALID EVIDENCE EVEN DURING POST-HEARING CONSIDERATIONS. IN THE APPELLANT'S VIEW, THE AFFIDAVIT SUGGESTS CONCLUSIVELY THAT PRESSLEY'S TESTIMONY MIGHT WELL HAVE AFFECTED THE OUTCOME OF THE TRIAL. THE ACTIONS MENTIONED IN KEITH PRESSLEY'S AFFIDAVIT WOULD HAVE CAST SERIOUS DOUBT ON THE STATES ARGUMENT LINKING THE SUSPECT TO THE CRIME. RESPONDENTS MAY ARGUE THAT A JURY MAY QUESTION MR. PRESSLEY'S CREDIBILITY, AND SO FORTH, THESE ARGUMENTS ESTABLISH ONLY THAT A JURY MIGHT STILL CONVICT. THEY DO NOT ESTABLISH THAT IT WOULD. WHAT IS CLEAR AT THIS POINT IS THAT THE TESTIMONY WOULD HAVE BEEN ENTIRELY POSITIVE FOR THE APPELLANT, WOULD HAVE PUT HIS CASE IN A SUBSTANTIALLY BETTER LIGHT THAN IN THE ORIGINAL TRIAL, AND WOULD HAVE WEAKENED THE STATES ARGUMENT. "WHETHER THE CASE WOULD ACTUALLY COLLAPSE UNDER THE WEIGHT OF TRIAL IS A QUESTION WHICH CAN BE DEFINITELY ANSWERED ONLY BY TRYING IT." HOWEVER, IN LIGHT OF THE NEW EVIDENCE, THE APPELLANT BELIEVES THAT IT WOULD, AND IS ENTITLED TO HIS CHANCE TO FIND OUT.

WHEREFORE, THE APPELLANT SAYS THAT THE FINDINGS AND JUDGEMENT OF THE LOWER COURT IS IMPROPER, AND REQUESTS THAT THE JUDGEMENT BE REVERSED, AND THAT A NEW TRIAL BE GRANTED ON BEHALF OF THE APPELLANT.

MAY 17, 2013
FAIRFAX, S.C. 29827

RESPECTFULLY SUBMITTED,
St. Michael J. [Signature]
MICHAEL J. [Signature] #12496 Pre SE
Aiken Dale Coll. Inst. - F810227
P.O. BOX 1151
FAIRFAX, S.C. 29827

LEGAL MAIL

THE STATE OF SOUTH CAROLINA
THE COUNTY OF ALLENDALE

Affidavit Of Keith Pressley

RE: Michael D.Mcfadden vs.State Of South Carolina

I, Keith Pressley Keith Pressley, Being duly sworn, deposes and says: That for my conscience sake, Im writting this affidavit so that the truth will be made known, and in order to correct the wrong that has been done. Over 20 years ago, Michael Mcfadden and I were sitting outside of his girlfriend Cassandra Pendergrass house in the Frieson Homes Project. Mr.Mcfadden had just came home to Kingstree,S.C. We had not seen each other for quite some time and had been together most of the day. While sitting in my car at the Rec. Center across from Ms.Pendergrass apartment, two guys approached the car and asked if we wanted to buy some jewelry? Apparently, one of the guys knew Mr.Mcfadden. After taking a look at the jewelry, both me and Mr.Mcfadden told them that we did'nt want to buy it. Before the two guys could get away Mr.Mcfadden called them back and offered to buy the jewelry from them, and he did. Later I left Mr.Mcfadden in the project With Ms.Pendergrass and one of her female friends. I came back later that night to pick Mr.Mcfadden up from Ms.Pendergrass apartment. We rode over to the Rocktown community, and I left Mr.Mcfadden inside a club we were at in order to go buy some cigarettes from Wards grocery. I left Mr.Mcfadden ther in order to call officers Michael Graham and Michael Kirby, because they had busted me earlier with drugs. In order to go free of the charge I gave them Michael Mcfadden's name and told them that he had done it, but did not tell them I was with Mr.Mcfadden when he purchased the jewelry from the two guys. Officers Graham and Kirby had caught me selling drugs out the trunk of my car, and because they had asked me about a robbery and some jewelry, I lied in order not to be prosecuted for the drugs that they took from me that afternoon. Im very sorry about what I did, and I pray that Michael and His family will find it in their hearts to forgive me for what I did.

Under the penalty of perjury, I swear that the above information is true and accurate.

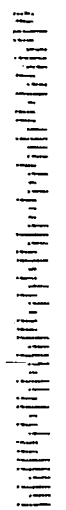
sworn and subscribed to before
me this 31 day of Jan, 2012.

Notary Public for S.C. Cynthia G Sanders

My commission expires 3/9/21

S/ Keith Pressley
Keith Pressley

Mr. Mil...
126806 - F5B227
P.O. Box 1151
Fairfax, SC 29827



RECEIVED

MAY 21 2013

SC Court of Appeals

Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

CHARLESTON, SC 294
WED 22 MAY 2013 PM

