

# Timothy L. Griffith Attorney at Law

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RECEIVED  
December 17, 2018

JAN 02 2019

Clerk of Court, South Carolina Supreme Court  
Case # 2017-CP-43-879

S.C. SUPREME COURT

Caziek Lighty #337834 v State of South Carolina

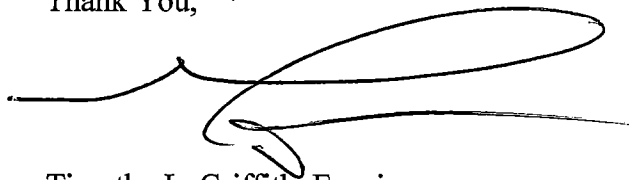
Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court  
The Office of the Attorney General of South Carolina  
The Honorable DeAndrea G. Benjamin  
SC Office of Indigent Defense / Commission of Indigent Defense

Please file the included NOTICE OF APPEAL for the case captioned.

**Attorney Timothy L. Griffith was appointed as PCR Council and not retained and will not be handling the Appeal.**

Thank You,



Timothy L. Griffith, Esquire

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF  
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case # 2017-CP-43-879

**RECEIVED**  
JAN 02 2019  
S.C. SUPREME COURT

The State,

Respondent,

v.

Caziek Lighty #337834

Appellant.

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NOTICE OF APPEAL

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Caziek Lighty appeals the decision of the Court, on December 4, 2018, where Mr. Lighty was denied his request for Post Conviction Relief. Mr. Lighty was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

12/17/18

  
\_\_\_\_\_  
Timothy L. Griffith, Esquire  
360 W. Wesmark Blvd,  
Sumter, South Carolina 29150  
Telephone: (803)607-9087  
Attorney for Appellant (relieved)  
Will not be representing on appeal

Other Counsel of Record:  
Kelly Oppenheimer, Esquire  
Assistant Attorney General  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case # 2017-CP-43-879

**RECEIVED**

JAN 02 2019

S.C. SUPREME COURT

The State,

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Caziek Lighty #337834

Appellant.

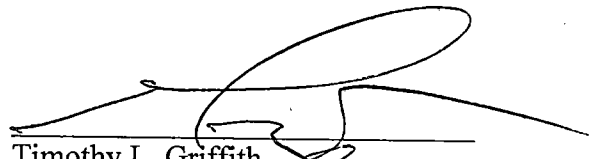
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on December 17, 2018

Date \_\_\_\_\_

I received a copy of the Notice of Appeal  
on this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Office of the Attorney General  
PCR Division

  
\_\_\_\_\_  
Timothy L. Griffith  
360 West Wesmark Blvd  
Sumter, SC 29150  
Telephone: (803) 607-9087  
Attorney for Appellant

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

RECORDED IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

2018 DEC 01 AM 10:30

Caziek Lighty, #337834,

Case No. 2017-CP-43-879

Applicant,

JAMES S. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed May 16, 2017 by Caziek Lighty (Applicant). The State (Respondent) made its Return on July 6, 2017, requesting an evidentiary hearing be held. An evidentiary hearing was convened on March 26, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Timothy L. Griffith, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. During its December 2015 term, the Sumter County Grand Jury indicted Applicant for one count of armed robbery, one count of kidnapping, one count of first-degree burglary, and one count of criminal conspiracy (2015-GS-43-1152). Richard A. Blackmon, Sr., Esquire represented Applicant on these charges. On June 13, 2016, Applicant appeared before the Honorable W. Jeffrey Young and pled guilty as indicted to one count of first-degree burglary. Pursuant to a recommendation by the State, Judge Young sentenced Applicant to a term of imprisonment for eighteen years. Applicant did not appeal his conviction or sentence.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. Failure to investigate evidence
    - i. "There were no fingerprints on the wepon. [sic] or dwelling."
  - b. Failure to investigate witnesses
    - i. "Victim cannot point out suspect in photo line up."

At the hearing, Applicant proceeded forward on the claims of ineffective assistance of counsel in his application, as well as an additional claim of newly discovered evidence based on Applicant's co-defendant's recantation of his statement to law enforcement, in which he indicated that Applicant was involved in the underlying crime.

#### **STATEMENT OF FACTS ADDUCED AT THE PLEA**

On April 3, 2015, Applicant and his co-defendant, Teshawn McFadden, kicked in a door on the side of the victims' home leading into the garage, proceeded across the garage, and kicked in the door leading to the laundry room and kitchen area. Tr. 5. It was approximately nine o'clock in the evening. Tr. 5. McFadden had attempted to conceal his face with a cloth, but the victims knew him from work. Tr. 5-6. Upon hearing the noise of the second door being kicked in, the male victim came down the hallway and saw Applicant and McFadden. Tr. 5. When the male victim encountered Applicant and McFadden, they told him to lie face down on the floor. Tr. 5. Shortly thereafter, the female victim stepped into the hallway from the bathroom, and the men told her to lie on the floor. Tr. 5. The victims remained face down on the floor while Applicant and McFadden went through the three bedrooms, taking electronics. Tr. 5. Applicant and McFadden fled the scene, and the male victim ran to the back door and yelled to the men he knew it was McFadden. Tr. 6.

Investigators were able to get in touch with McFadden and interviewed him at the sheriff's office. Tr. 6. In his statement, McFadden said both he and Applicant were in the victims' home. Tr. 6. As a result, investigators took Applicant into custody and interviewed him. Tr. 6. During the interview, Applicant admitted to being in the victims' home. Tr. 6.

#### **TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant presented the testimony of Applicant's co-defendant, Teshawn McFadden, and Richard A. Blackmon, Sr. (hereinafter "Counsel"). This Court also had before it a copy of the transcript from Applicant's plea, the records of the Sumter County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant first presented the testimony of McFadden. At the onset of his testimony, Applicant indicated he had spoken with his plea counsel prior to testifying and understood his constitutional rights, including the right to remain silent. This Court advised McFadden of his constitutional rights, and McFadden indicated he understood those rights, wanted to testify at the hearing, and had not been threatened or promised anything in exchange for his testimony. Following that inquiry, this Court found McFadden had waived his constitutional rights and, consequently, this Court allowed him to testify.

Thereafter, McFadden testified he was convicted as Applicant's co-defendant and is presently incarcerated at Lieber Correctional Institution. He further testified Applicant was not involved in the crime. He elaborated he committed this crime alone. He testified he gave a statement to law enforcement, but he denied saying in that statement that Applicant was present during the crime. McFadden admitted an individual, which McFadden referred to as "Ziek," was mentioned in his statement, but elaborated that statement was a lie. He admitted he gave his

signature to law enforcement. He testified he never identified Applicant, and indicated to law enforcement he was unaware of what Applicant looked like. He also testified, however, he identified a picture of Applicant as the man who was involved in this crime with him, but law enforcement suggested to him that he identify Applicant. He further testified law enforcement tried to coerce him, and he was following their suggestions. He elaborated law enforcement interviewed him for two-and-a-half hours. During that interview, McFadden testified he reiterated to law enforcement he committed the crime alone, but he ultimately implicated Applicant as being involved in this crime.

Next, Applicant presented testimony from Counsel. Counsel testified he was appointed to represent Applicant, and he was Applicant's third attorney. He elaborated he was appointed on February 29, 2016, but he did not receive this appointment until April 4, 2016. He testified Applicant's case was set on the trial docket in May 2016, but he moved for and was granted a continuance. He further testified after the continuance he had ample time to prepare Applicant's case, and they were prepared to select the jury for trial on the day of Applicant's plea.

Counsel also testified he did not hire an independent investigator, but there was no indication that he needed one. He testified he did not speak with the witnesses or the victims. He also testified he did not speak with McFadden because he was represented by counsel, and McFadden was going to testify against Applicant at trial. Counsel testified he reviewed the incident reports and statements of the witnesses, McFadden, and Applicant. He elaborated he received all discovery from Applicant's previous attorneys, and he had an opportunity to discuss Applicant's case with Applicant's two previous attorneys and also had an opportunity to review their files. He also testified the Solicitor made the evidence locker and his file available to him. He testified he reviewed the discovery with Applicant, and Applicant neither denied giving a

statement to law enforcement nor indicated his statement was false. In that statement, Applicant indicated McFadden told him all he had to do was watch the door. He elaborated in Applicant's statement, he indicated both he and McFadden entered the victims' home. He further testified Applicant did deny parts of his statement; and as a result, Counsel moved to suppress the statement, arguing the statement was not in Applicant's handwriting but rather law enforcement's notes from their interview with Applicant. Counsel elaborated Applicant did not deny being at the crime scene and did not deny going inside the victims' home. Counsel also testified in McFadden's statement, McFadden indicated he and Applicant kicked in a side garage door of the victims' home and they both entered the residence.

Counsel also testified he spoke with Applicant at least three or four times before his plea for at least an hour each time. He testified Applicant was able to speak with him and review the statements and evidence. He elaborated Applicant understood their discussions, and there was no indication Applicant was not competent or required a mental evaluation. He further elaborated Applicant did not display any inappropriate behavior. Counsel also testified Applicant wanted him to interview three individuals who were incarcerated, but he never provided Counsel with their names. He further testified Applicant did not give him any other names of witnesses to interview.

Counsel testified he advised Applicant to accept the plea offer. He elaborated the offer was for a maximum sentence of eighteen years, which was substantially less than the potential sentence Applicant was facing if he had proceeded to trial and been convicted. He further testified the State agreed to dismiss the other charges. He also testified he did not recall advising Applicant he would not win at trial. He elaborated he believed there was a likelihood a jury would convict Applicant, especially given his statement to law enforcement. Counsel also

part on a prediction whether the evidence likely would have changed the outcome of a trial.” *Id.* Furthermore, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, No. 2016-001079, 2018 WL 736339, at \*2 (S.C. Feb. 7, 2018), *reh’g denied* (Mar. 29, 2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

Here, Counsel testified he obtained and reviewed the entire discovery from Applicant’s previous two attorneys. He elaborated he reviewed both Applicant’s and McFadden’s statements, and both statements implicated Applicant in some manner. He further elaborated Applicant never denied being in the residence. He also testified he had access not only to Applicant’s previous attorneys’ files but also to the State’s evidence locker and file. Counsel testified he did not hire an investigator, but there was no indication he needed to hire one. Therefore, this Court finds Counsel’s investigation was reasonable under the circumstances. Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

#### ***Newly Discovered Evidence***

Traditionally, in order to obtain a new trial based on after-discovered evidence, the party requesting said new trial “must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or

innocence; and (5) is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1993) (citing *State v. Caskey*, 273 S.C., 325, 256 S.E.2d 737 (1979)). However, this traditional test “is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea.” *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014). Rather, following a guilty plea:

relief is appropriate *only* where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea, and in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the ‘interest of justice’ requires the applicant’s guilty plea to be vacated.

*Id.* at 470, 765 S.E.2d at 130 (emphasis added). In order to do so, the interests of justice must outweigh “the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. *Id.* Furthermore, where the ground for a new trial is the recantation of testimony, the closest scrutiny should be applied, as this type of testimony is ordinary unreliable. *State v. Wright*, 269 S.C. 414, 421, 237 S.E.2d 764, 768 (1977) (quoting *State v. Mayfield*, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959)).

Here, Applicant admitted the veracity of the facts both as presented in the indictment and as presented by the State. Tr. 5, 8. He indicated to the plea court he understood his constitutional rights and wanted to waive those rights and plead guilty. Tr. 9. Applicant further indicated he was neither threatened by anyone nor promised anything in exchange for his guilty plea. Tr. 10. Moreover, he indicated to the plea court he was satisfied with the services provided by Counsel and did not need additional time to discuss with him before pleading guilty. Tr. 10.

Applicant now wants to rely on the recantation of his co-defendant’s statement to law enforcement. That co-defendant provided law enforcement with a statement in which he not

only admitted his own guilt but also implicated Applicant in this crime. This co-defendant's testimony at the evidentiary hearing, nearly two years after Applicant's plea, is not only suspicious but also unreliable. Therefore, this Court finds the interests of justice do not outweigh Applicant's solemn admission of guilt, and Applicant has failed to meet his burden required to permit a new trial. This allegation must be denied and dismissed with prejudice.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 4 day of Dec, 2018.



DEANDREA G. BENJAMIN  
Presiding Judge  
Third Judicial Circuit

Columbia

, South Carolina