

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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DEC 17 2019

CERTIORARI TO SUMTER COUNTY  
Honorable DeAndrea G. Benjamin, Post-Conviction  
Relief Judge

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S.C. SUPREME COURT

Appellate Case No. 2019-000002

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CAZIEK LIGHTY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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The PCR court did not err in denying Petitioner’s PCR application because the PCR court properly weighed the value of the alleged newly discovered evidence against the waiver and solemn admission of guilt encompassed in the guilty plea and the compelling interests in maintaining the finality of guilty-plea convictions, and properly determined that the newly discovered evidence was suspicious and unreliable.

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## **RESPONDENT'S STATEMENT OF ISSUE ON APPEAL**

The PCR court did not err in denying Petitioner's PCR application because the PCR court properly weighed the value of the alleged newly discovered evidence against the waiver and solemn admission of guilt encompassed in the guilty plea and the compelling interests in maintaining the finality of guilty-plea convictions, and properly determined that the newly discovered evidence was suspicious and unreliable.

## STATEMENT OF THE CASE

Petitioner is currently incarcerated 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 Petitioner 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 Petitioner on these charges. W. Jason Corbett represented the State. On June 13, 2016, Petitioner appeared before the Honorable W. Jeffrey Young and pled guilty to one count of first-degree burglary. Pursuant to a recommendation by the State, Judge Young sentenced Petitioner to a term of imprisonment for eighteen years. Petitioner did not appeal his conviction or sentence.

Petitioner filed an application for post-conviction relief filed May 16, 2017, alleging the following claims of ineffective assistance of counsel: (1) failure to investigate evidence; and (2) failure to investigate witnesses. 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. Petitioner proceeded forward on the claims of ineffective assistance of counsel listed in his application, as well as an additional claim of newly discovered evidence based on the recantation of the statement made by Petitioner's co-defendant, Teshawn McFadden ("McFadden"), in which McFadden indicated Petitioner was involved in the underlying crime. Petitioner 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 PCR court filed an Order of Dismissal on December 11, 2018, dismissing Petitioner's application.

Petitioner filed a timely Notice of Appeal on December 17, 2018. Petitioner, through Appellate Defender Adam Sinclair Ruffin, Esquire, filed a Petition for Writ of Certiorari on August 14, 2019. This Return follows.

### **STATEMENT OF THE FACTS**

On April 3, 2015, at approximately 9:00 p.m., Petitioner and his Co-Defendant, 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. (App. 6, l. 8-12). McFadden had attempted to conceal his face with a cloth, but the victims knew him from work. (App. 6, l. 21-25). Upon hearing the noise of the second door being kicked in, the male victim came down the hallway and saw Petitioner and McFadden. (App. 6-7). When the male victim encountered Petitioner and McFadden, they told him to lie face down on the floor. (App. 6, l. 14-15). Shortly thereafter, the female victim stepped into the hallway from the bathroom, and the men told her to lie on the floor. (App. 6, l. 15-19). The victims remained face down on the floor while Petitioner and McFadden went through the three bedrooms, taking electronics. (App. 6, l. 18-24). Petitioner and McFadden fled the scene, and the male victim ran to the back door and yelled to the men he knew it was McFadden. (App. 7).

## STANDARD OF REVIEW

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts give no deference to the PCR court's conclusions of law and reviews those conclusions de novo. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

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 Petitioner 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 Petitioner 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 Petitioner’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)).

## ARGUMENT

**The PCR court did not err in denying Petitioner's PCR application because the PCR court properly weighed the value of the alleged newly discovered evidence against the waiver and solemn admission of guilt encompassed in the guilty plea and the compelling interests in maintaining the finality of guilty-plea convictions, and properly determined that the newly discovered evidence was suspicious and unreliable.**

Petitioner argues the PCR court erred by denying Petitioner's application for post-conviction relief because Petitioner presented new evidence at his PCR hearing showing that McFadden recanted his original statement to law enforcement which had implicated Petitioner in the crime. Petitioner's argument is without merit, and, therefore, certiorari should be denied on this issue.

In this case, the PCR court properly evaluated the newly discovered evidence under the Jamison standard and determined that the newly discovered evidence was unreliable. See Jamison, 765 S.E.2d at 130 (Holding that the interests of justice must outweigh the "waiver and solemn admission of guilty encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions."). Here, Petitioner admitted to the veracity of the facts both as presented in the indictment and by the solicitor at Applicant's guilty plea hearing. (App. 5, 8). Petitioner also previously made a statement to law enforcement, indicating that he was at the scene and McFadden told Petitioner, "all [Petitioner] had to do was watch the door." (App. 75). Moreover, as the PCR court properly found, the testimony from McFadden at the PCR testimony is not credible. At Petitioner's PCR hearing, McFadden admitted the written summary of his statement, which McFadden signed, indicated he implicated Petitioner in the crime. (App. 40, 1. 20-25). McFadden testified that although the statement was not a word-for-word account of his statement, it was a fair and accurate representation of the statement he gave to law enforcement in connection with the incident. (App. 42). The statement identifies an individual named "Ziek" on

multiple occasions, which based on his testimony, indicates that he was referring to Petitioner. (App. 40, l. 20-25). McFadden testified law enforcement consistently referred to the individual as “Lighty” (Petitioner) and that McFadden did not recognize this name, and McFadden testified he told law enforcement did not know what “Lighty” (Petitioner) looked like. However, McFadden later testified he in fact identified “Lighty” (Petitioner) by several photographs provided to him by law enforcement. (App. 45-46).

Furthermore, Petitioner indicated to the plea court he understood his constitutional rights and wanted to waive those rights and plead guilty. (App. 9). Petitioner further indicated he was neither threatened by anyone nor promised anything in exchange for his guilty plea. (App. 10, l. 1-4). Importantly, Petitioner told the plea court he was pleading guilty because he was in fact guilty. (App. 4, l. 4-6). Therefore, after reviewing the evidence and the PCR testimony, the PCR court properly evaluated the newly discovered evidence and determined that the interests of justice do not outweigh Petitioner’s solemn admission of guilty, especially in light of the “suspicious” nature of McFadden’s recantation.

Although Petitioner asserts, “McFadden’s admissions that he acted alone will make it impossible for him to assert in some future proceeding that his will was overborne when he pled guilty,” recantations are presumed to be unreliable and Petitioner fails to show how the PCR court erred in determining that McFadden’s testimony was unreliable. (Pet. For Writ of Cert., filed August 14, 2019; See Wright, 269 S.C. at 414 (quoting Mayfield, 235 S.C. at 11.). McFadden’s recantation is unreliable, as it contradicts Petitioner’s own statement that put Petitioner at the scene of the crime and McFadden’s original signed statement that implicated Petitioner as well. Petitioner also pled guilty and testified that he was pleading guilty because he was guilty. Furthermore, McFadden conveniently chose to recant his statement after his own guilty plea and

sentencing occurred, in order to protect his Fifth Amendment rights under the Double Jeopardy Clause by ensuring that recantation did not affect his guilty plea for which he received the minimum sentence. Accordingly, certiorari should be denied in this case.

**CONCLUSION**

Based on the foregoing argument, the PCR court did not err in denying Petitioner's PCR application. Therefore, the State requests certiorari be denied.



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ATTORNEY FOR RESPONDENT

December 17th, 2019

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APPEAL FROM SUMTER COUNTY  
Honorable DeAndrea G. Benjamin, Post- Conviction Relief Judge

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STATE OF SOUTH CAROLINA,

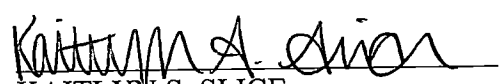
Respondent.

**CERTIFICATE OF SERVICE**

I, Kaitlyn Slice, certify that I have served the within Return to Petition for Writ of Certiorari by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Adam S. Ruffin, Esquire  
S.C. Commission on Indigent Defense  
Post Office Box 11433  
Columbia, South Carolina 29211**

I further certify that all parties required by Rule to be served have been served. This 17th day of December, 2019.

  
KAITLYN S. SLICE  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

December 17, 2019

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DEC 17 2019

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: Caziek Lighty v. State of South Carolina**  
**Appellate Case No. 2019-000002**  
**Lower Court Case No. 2017-CP-43-879**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Brianna L. Schill  
Assistant Attorney General  
SC Bar No. 103380

BLS/ks  
Enclosures

cc: Adam S. Ruffin, Esquire (2 copies)