

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Sumter County

DeAndrea G. Benjamin, Circuit Court Judge

CAZIEK LIGHTY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000002

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

The PCR judge erred by denying Petitioner’s application for relief because at the PCR hearing he presented newly discovered evidence that his co-defendant, Teshawn McFadden, recanted his original statement to law enforcement which had implicated Petitioner in the crime and McFadden admitted that he committed the crime alone and Petitioner was not involved in the burglary to which Petitioner pled..... 4

CONCLUSION 8

ISSUE PRESENTED

Did the post-conviction relief (PCR) judge err by denying Petitioner's application for relief when at the PCR hearing he presented newly discovered evidence that his co-defendant, Teshawn McFadden, recanted his original statement to law enforcement which had implicated Petitioner in the crime and McFadden admitted that he committed the crime alone and that Petitioner was not involved in the burglary to which Petitioner pled?

STATEMENT

On June 13, 2016, Petitioner pled to Burglary First Degree in Sumter County before the Honorable W. Jeffrey Young. Petitioner was represented by Richard A. Blackmon, Sr. and the state was represented by W. Jason Corbett.

The state maintained that Petitioner and a co-defendant, Teshawn McFadden, entered the home of the alleged victims on April 3, 2015 at 9:00 p.m. App. 5, ll. 14 – 23. The two alleged victims, Mr. Jara and his sister, were confronted by the two intruders and ordered to lay down on the floor. App. 6, ll. 12 – 18. At that point the intruders went through the home and stole electronics. App. 6, ll. 18 – 20.

Jara told law enforcement that he knew one of the intruders to be Teshawn McFadden because they had previously worked together. App. 6, ll. 20 – 23. After receiving this information, law enforcement interviewed Teshawn McFadden who implicated Petitioner. Law enforcement then spoke with Petitioner who admitted to being in the victim's residence. App. 7, ll. 7 – 14.

At the guilty plea, Petitioner agreed with the facts as presented by the state and told the judge that he was guilty of the offense. App. 8, ll. 1 – 5. The Court accepted Petitioner's plea and sentenced him to eighteen years as recommended by the state. App. 11, ll. 11 – 16; App. 12, ll. 3 – 5; App. 17, ll. 18 – 22. Petitioner did not appeal his guilty plea or sentence.

Petitioner filed an application for post-conviction relief on May 16, 2017. App. 19. The state filed its Return on July 6, 2017. App. 26 – 29. On March 26, 2018 an evidentiary hearing was held before the Honorable DeAndrea G. Benjamin. App. 31 – 67. Petitioner was present and represented by Timothy L. Griffith, and the state was represented by Assistant Attorney

General Kelly Oppenheimer. App. 31. The PCR judge denied Petitioner's application for relief.
App. 87.

This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred by denying Petitioner's application for relief because at the PCR hearing he presented newly discovered evidence that his co-defendant, Teshawn McFadden, recanted his original statement to law enforcement which had implicated Petitioner in the crime and McFadden admitted that he committed the crime alone and that Petitioner was not involved in the burglary to which Petitioner pled.

Generally, in determining whether a PCR Applicant should be granted a new trial based on after discovered evidence there are five factors the court should consider. Specifically, "the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Clark v. State, 315 S.C. 385, 387-388, 434 S.E.2d 266, 267 (1993).

In the context of a guilty plea, however, the Supreme Court held that this five-factor test is not proper in determining whether an applicant is entitled to a new trial based on after discovered evidence. Jamison v. State, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014). In Jamison, the Court held that:

[W]hen a PCR applicant seeks relief on the basis of newly discovered evidence 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.

At Petitioner's PCR hearing he called his co-defendant, Teshawn McFadden, to the witness stand. App. 34, l. 14 – 47, l. 18. McFadden testified that he was currently incarcerated at Lieber Correctional Institution having been convicted as Petitioner's co-defendant. App. 35, ll. 6 – 10; App. 39, l. 24 – 40, l. 2. While McFadden's sentence does not appear in the record of the proceedings below, according to the South Carolina Department of Corrections website, he is currently serving a fifteen-year sentence for Burglary First Degree. According to the Sumter County Third Judicial Circuit Public Index, McFadden pled guilty to this offense on April 21, 2016 before the Honorable George C. James, Jr. This Court may take judicial notice of this fact and this information is publicly available at <https://public.doc.state.sc.us/scdc-public/> and <https://www.sccourts.org>.

McFadden stated that Petitioner was not present when he committed the burglary and that he acted alone in committing this offense. App. 40, l. 21 – 41, l. 5. McFadden acknowledged that he gave a statement to law enforcement implicating Petitioner in the offense but that he only gave that statement after being coerced by the officers. App. 41, l. 11 – 12, l. 13; App. 43, ll. 1 – 14. McFadden admitted that when he told law enforcement that Petitioner was involved, and that Petitioner kicked the door of the house in that those were both lies. App. 45, ll. 12 – 23. He further testified that he was the person who told the victims to lie down on the ground and that Petitioner was not present at the scene. App. 45, l. 24 – 46, l. 9. McFadden said that he only picked Petitioner out of a line up because law enforcement suggested it to him and they would not believe him when he told them that he acted alone. App. 46, l. 18 – 47, l. 14.

Under the test laid out in Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014), Petitioner should have been granted a new trial based on this newly discovered evidence. Under the first prong, McFadden's recantation was not discovered until after Petitioner had already pled

guilty. Furthermore, Petitioner's plea counsel could not have discovered this evidence in the exercise of reasonable diligence because McFadden was represented at the time and plea counsel was advised that he would be testifying against Petitioner at trial. App. 50, ll. 20 – 24. Plea counsel had received and reviewed McFadden's statement which implicated Petitioner and was not given any indication that McFadden was going to recant that statement. App. 50, ll. 12 – 24.

The second prong of Jamison required the newly discovered evidence to be of such importance that the interests of justice would require the guilty plea to be vacated. Although our courts view witness recantations with suspicion and close scrutiny, in Petitioner's case the recantation goes to the heart of his guilty plea. See State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716 (1959).

Neither of the victims in this case identified Petitioner as being present. Only McFadden was identified by witness Jara. Therefore, the only evidence which led to the interrogation of Petitioner was the statement given to law enforcement by McFadden. While under oath and testifying at the PCR hearing, McFadden recanted his statement to law enforcement, and asserted that he had been coerced and that law enforcement had suggested to him that he pick Petitioner out of the line-up.

It is important to note that McFadden's recantation was not merely a written affidavit, as was the case in Mayfield, but rather sworn testimony before a Circuit Court Judge. In fact, the PCR judge directly questioned McFadden prior to his testimony about his constitutional right to remain silent and informed him that his testimony could be used against him later. App. 37, l. 12 – 38, l. 10. The Court continued by asking McFadden whether his testimony would be given freely and voluntarily and without anyone threatening, forcing or promising him anything. App.

38, l. 15 – 39, l. 6. Only after this line of questioning by the Court was McFadden allowed to testify. App. 39, ll. 18 – 19.

McFadden's recantation was also done prior to his filing an appeal or an application for post-conviction relief and he was only sentenced to the *minimum sentence* at his own plea. Thus, 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. See State v. Sroka, 267 S.C. 664, 230 S.E.2d 816 (1976). Under the second prong of Jamison, the facts and circumstances of this case would demand a new trial because the weight and quality of the newly discovered evidence casts serious doubt on Petitioner having pled guilty because he was guilty.

Therefore, the interests of justice required that Petitioner receive a new trial based on this newly discovered evidence and the PCR judge's finding to the contrary was error. Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014).

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented.



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of August, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Caziek Jaheem Lighty, #337834, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of August, 2019.



Adam Sinclair Ruffin
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 14th day of August, 2019.

Marey Algire (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027