

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

CHARLES E. BUTLER
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Date Submitted: March 26, 2015
Date Decided: May 18, 2015

Diana Dunn, Deputy Attorney General
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Re: *State v. Cameron Davis*
Def. I.D.: 1007021708

Dear Counsel:

On May 13, 2011 a jury found Defendant Cameron Davis guilty on three counts of Robbery First Degree and other charges. On July 14, 2014, Mr. Davis, with the assistance of counsel, filed an Amended Motion for Postconviction Relief. That Motion advanced two grounds for relief: (1) Mr. Davis' trial counsel was ineffective for failing to timely file a motion to suppress Mr. Davis' confession and (2) Mr. Davis' trial counsel was ineffective for failing to subpoena an exculpatory defense witness.

On March 26, 2015, the Court held an evidentiary hearing. After hearing evidence regarding the suppression of evidence, the Court ruled that there could be

no relief because the evidence would not have been suppressed had a hearing been timely requested and held. No evidence was presented with regard to the second ground for relief and the Court allowed defense counsel an additional thirty days to submit any evidence regarding the exculpatory witness argument, such as an affidavit from the alleged witness showing that the witness would have been available to give exculpatory testimony on the trial date.

By letter dated April 27, 2015, defense counsel informed the Court that he has unsuccessfully made significant efforts to procure the evidence, and that the defense rests. “[I]n a postconviction proceeding, the petitioner has the burden of proof and must show that he has been deprived of a substantial constitutional right before he is entitled to any relief.”¹

Attached to the Defendant’s motion is a Department of Justice Special Investigator’s Report. In that report, the special investigator wrote that the alleged exculpatory witness asked why Mr. Davis’ name was on her court papers because she did not believe that he was the one who robbed her. That Report was sent to Mr. Davis’ trial counsel, and the trial was delayed for over two months. Ultimately, when the case finally went to trial, the witness was not present and did not testify.

There is no evidence that, had the witness been subpoenaed by defense counsel, she would have been available or that she would have testified in Mr. Davis’ favor. Despite diligent efforts, post conviction counsel has been unable to locate the witness, secure her attendance for a hearing or even procure an affidavit explaining what she knows and whether she was available to testify on defendant’s behalf if and when called upon to do so. Because the defense has failed to show

¹ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

that Mr. Davis' trial counsel could have secured the appearance of the witness or that the witness would have testified in Mr. Davis' favor, Mr. Davis' Motion for Postconviction Relief must be denied.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler