

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

JUL 30 2013

S.C. Supreme Court

LEON WALKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000519

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX	1
ISSUE PRESENTED	2
STATEMENT	3
ARGUMENT	4
CONCLUSION	7
PETITION TO BE RELIEVED AS COUNSEL.....	8

ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly?

STATEMENT

In June 2009, the Richland County Grand Jury indicted Leon Walker on three counts of forgery. On April 19, 2011, Walker appeared before the Honorable Thomas W. Cooper, Jr. and entered a guilty plea to one count of forgery and one count of possession with intent to distribute (PWID) cocaine first offense. The remaining two counts of forgery and one trafficking in cocaine 10-28 grams were *nolle prossed* by the state in return for his guilty plea. Walker was represented by Mark Sawyer, and the state was represented by Anne Spears-Walsh. Judge Cooper sentenced Walker to time served on the forgery and five years on the PWID cocaine. App. 12, ll. 4 – 15. Walker filed an appeal which was dismissed by the South Carolina Court of Appeals on June 22, 2011 pursuant to Rule 203(d)(1)(B)(iv), SCACR.

On November 7, 2011, Walker filed an application for post-conviction relief (PCR). The state filed a return on November 10, 2011. An evidentiary hearing was held on September 10, 2012 before the Honorable J. Ernest Kinard, Jr. Walker was represented by Rolland E. Greenburg, and the state was represented by Robert D. Corney. On February 6, 2013, Judge Kinard filed an order denying Walker's PCR application and dismissing it with prejudice. App. 60 – 67. Walker's attorney filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly.

On July 20, 2008 at the Parrots Head bar in Five Points, Walker paid for a six dollar drink with a counterfeit one hundred dollar bill. Then he kept the change. This occurred three times before he was charged with the forgeries. App. 6, ll. 11 – 25.

On December 29, 2010, a checkpoint was set up in Olympia. As Walker approached and saw the checkpoint, he started backing up, and was blocking traffic. The officers approached him, and Walker was arrested for driving under suspension (DUS). His car was searched, and a plastic bag with ten small bags inside filled with what filled tested to be powder cocaine were found. App. 7, ll. 1 – 16. Walker waived presentment to the grand jury on the PWID and pled guilty. App. 2, ll. 5 – 15; App. 68; App. 4, ll. 9 – 19.

At his PCR hearing, Walker testified that his plea counsel was ineffective because he led Walker to believe he would get probation for the PWID cocaine because Walker waived presentment to the grand jury on that charge. App.33, ll. 9 – 34, ll. 25. He pled guilty only because he relied on his attorney, and thought he would get probation. His plea was involuntary. App. 40, ll. 4 – App. 41, ll. 25; App. 42, 1 – App. 43, ll. 21.

Plea counsel testified that he never promised Walker anything. He did tell Walker that it was in Walker's best interest to plead guilty. App. 46, ll. 17 – App. 48, ll. 3; App. 50, ll. 1 – 17.

The PCR judge ruled that he found plea counsel's testimony to be credible while he found Walker's testimony to not be credible. App. 65. The judge held that counsel was not ineffective in his representation of Walker. Walker failed to prove any prejudice to him. App. 65.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel’s performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). The applicant must show that there is a reasonable probability that but for counsel’s errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege.” State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give the defendant an explanation of the defendant’s waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

Walker's plea counsel was ineffective for not insuring that Walker fully understood that he may not get probation because there was no connection between waiving presentment and receiving a lenient sentence such as probation.

CONCLUSION

Based on the above, certiorari should be granted, and the conviction and sentence reversed, and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is written in a cursive style with a large, sweeping flourish at the end.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of July, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
J. ERNEST KINARD, JR., CIRCUIT COURT JUDGE

LEON WALKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000519

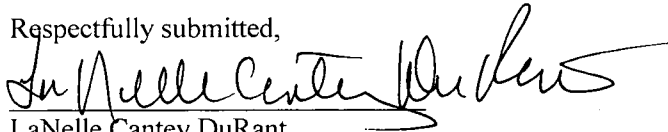
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leon Walker states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on September 10, 2012. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Leon Walker.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of July, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

LEON WALKER,

PETITIONER,

V.

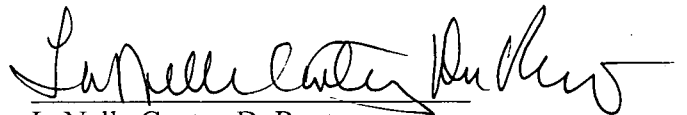
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000519

CERTIFICATE OF SERVICE


I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Leon Walker, #092708, at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472 this 30th day of July, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of July, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.