

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

FREDERICK JETER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000181

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not thoroughly cross examining the confidential informant (CI) on his prior convictions ?

STATEMENT

In October 2008, the Spartanburg County Grand Jury indicted Frederick Jeter on the charge of distribution of crack cocaine. On June 3, 2009, Jeter proceeded to trial before the Honorable E.C. Burnett, III, and a jury. Jeter was represented by Beverly Jones, and the state was represented by Abel Orlando Gray. The jury returned a verdict of guilty, and Judge Burnett sentenced Jeter to twenty-eight years as a third drug offense. App. 132, ll. 18 – App. 133, ll. 3; App. 136, ll. 22 – App. 137, ll. 3. Jeter's attorney filed a notice of appeal which was perfected by the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Jeter's conviction and sentence. State v. Jeter, Op. No. 2011-UP-394 (Ct. App. filed August 18, 2011).

On November 2, 2011, Jeter filed an application for post-conviction relief (PCR). The state filed a return on July 17, 2012. An evidentiary hearing was held on November 9, 2012 before the Honorable J. Mark Hayes, II. Jeter was represented by Ken Shabel, and the state was represented by Suzanne White. On December 27, 2012, Judge Hayes filed an order denying Jeter's PCR application and dismissing it with prejudice. App. 222 – 229. Jeter filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not thoroughly cross examining the confidential informant (CI) on his prior convictions.

On July 1, 2008, Spartanburg County Sheriff's Department scheduled an undercover drug buy using the confidential informant (CI), Michael Foster. The CI called Frederick Jeter to arrange to buy a quantity of crack cocaine. The transaction was being recorded both through audio and video. The CI and Jeter met at Boot's and Sonny's restaurant and the CI purchased \$40 worth of crack from Jeter. App. 27, ll. 1 – App. 36, ll. 3; App. 42, ll. 16 – App. 49, ll. 25.

During Jeter's trial, trial counsel did cross examine the CI, Foster, on the amount of money he had earned during the two years he had worked for the Sheriff's Office as a CI which was about \$4000. She questioned him about his prior drug convictions in a cursory manner. She barely mentioned his pending charges of forgery, shoplifting, and use of vehicle without the owner's permission. She did not question him further when he said those pending charges had nothing to do with this incident. App. 54, ll. 12 – App. 63, ll. 8.

On re-cross, trial counsel did ask if he had filed a tax return reflecting his income as a CI to which he responded no. App. 64, ll. 12 – 17.

At his PCR hearing, Jeter testified that trial counsel was ineffective because she did not do an "adequate" job of cross examining the CI Foster. She should have challenged the prior convictions more in depth. She did not go into any detail of those convictions. App. 176, ll. 6 – App. 177, ll. 16; App. 189, ll. 9 – App. 182, ll. 7. He said he wanted a new trial. App. 188, ll. 1 – 19.

Trial counsel testified that in the previous trial in December 2008 that ended in a mistrial, the trial judge ordered the state to provide to her a large group of documents" about the CI which included his rap sheet. App. 196, ll. 1 – 25; App. 200, ll. 19 – App. 201, ll. 25. She used that

information and her information from the prior trial to cross examine the CI Foster. App. 202, ll. 1 – App. 203, ll. 19.

The PCR judge ruled that he found the testimony of trial counsel to be more credible than the testimony of petitioner Jeter. App. 226. The judge ruled that Jeter failed to meet his burden of proof that trial counsel was deficient in her cross examination of the CI Foster. The judge wrote that cross examination was a matter of trial tactics. The judge also wrote that Jeter did not present any evidence at the PCR hearing that would have been obtained if cross examination had been different. Jeter did not show how a different approach to cross examination would have been beneficial to him. App. 227.

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, *supra*; Butler v. State, *supra*.

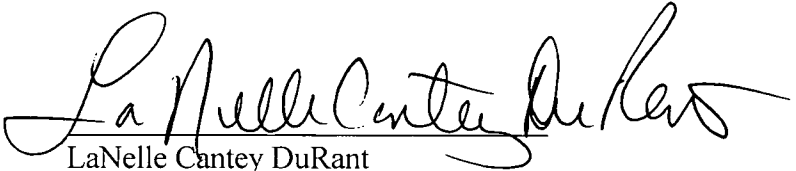
A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel’s performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

The PCR court should have found trial counsel ineffective for not inquiring more deeply into the CI’s convictions and pending charges. The forgery was a crime of dishonesty, and counsel had the opportunity to demonstrate to the jury the unreliability of the CI.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of September, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
J. MARK HAYES, II, CIRCUIT COURT JUDGE

FREDERICK JETER,

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V.

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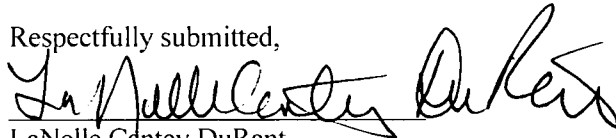
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Frederick Jeter 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 November 9, 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 Frederick Jeter.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of September, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

FREDERICK JETER,

PETITIONER,

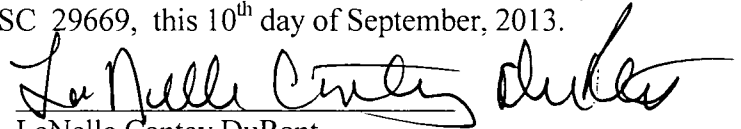
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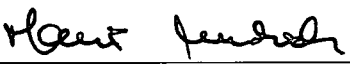
CERTIFICATE OF SERVICE

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 Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Frederick Jeter, #233386, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 10th day of September, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day
of September, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.