

STATE of SOUTH CAROLINA  
IN THE SUPREME COURT

CEDRIC KEARSE 330288      PETITIONER

✓

STATE of South CAROLINA      RESPONDENT

APPELLATE CASE NO 2012-213198

Pro se to my Johnson Petition for writ of  
CERTIORARI

LANELLE CANTEY DURANT  
Appellate Defender  
Attorney for Petitioner

**RECEIVED**

OCT 21 2013

**S.C. SUPREME COURT**

## Issues Presented

Did the trial court Judge violate Federal Rule Criminal Procedure Rule 11(e)(1) 18 USC PARTICIPATING in my plea discussion?

Did the PCR court err in failing to find plea counsel ineffective for not insuring that my guilty plea was entered freely voluntarily AND knowingly?

## Argument

The trial Judge did violated Federal Rule Criminal Procedure Rule 11(e)(1) 18 USCA IS A plain error CONTAIN A CLEAR COMMAND THE COURT SHALL NOT PARTICIPATE IN ANY plea discussion. THAT ENTITLES A DEFENDANT TO WITHDRAW HIS GUILTY PLEA  
US V BRUCE 976 F2d 552 (9th Cir 1992)

ON August 25, 2008 THE JUDGE DID PARTICIPATED IN MY PLEA DISCUSSION ON Supp App 6.11.7-10 (Impossible just got extended NEVER MADE CLEAR 8 OR 12 YEARS THAT EXPIRED ALREADY) Supp App 7.11.8-11 Supp App 7.11.13-14 Supp App 8.11.6-17 (CAN SENTENCE ME UP TO 63 YEARS)

BEAVER V STATE 247 SE2d 448 271 SC 381 SC 1978  
A DEFENDANT'S GUILTY PLEA INDUCED BY TRIAL JUDGE STATEMENT INDICATING THAT DEFENDANT WOULD BE FOUND GUILTY AND RECIEVE THE MAXIMUM SENTENCE SHOULD HE CONTINUE HIS TRIAL WAS UNDULY COERCED AND THEREFORE INVOLUNTARILY AS MATTER OF LAW.

ON Supp App 10.11.19-25 TO Supp App 11.11.1-4  
(WARNING ME SHE KNOW MY RECORD)

ON Supp App 11 11 15-25 (if only there to let me know how much time left AND I told the court I will go to trial should have been the end of discussion) Supp App 12 11 4-8 (SAID I AM NOT TAKING IT) Supp App 12 11 9-14 Reminding me I CANNOT get no less than 25 years if I AM found guilty

US ex Rel ELKINS V GILLIGAN 256 F Supp 244 256 (SDNY 1966) A DEFENDANT NEED NO REMINDER THAT IF HE REJECT THE PROPOSAL STAND UPON HIS RIGHT TO TRIAL AND IS CONVICTED HE FACES A SIGNIFICANTLY LONGER SENTENCE.

ON Supp App 12 11 15-18 (tried to persuade me, broke her word if only there AS A time keeper) Supp App 12 11 23-25 to Supp App 13 11 1-4 (with a new plea that never came from the solicitor who has not said one word since Supp App 6 11 1-2

I told the Judge twice I did not understand before she said sorry. maybe get with Ullman who was not ANY help saying we have gone over this Supp App 13 11 5-12

At my PCR hearing my trial counsel made reference that I may have been prejudiced by the trial court giving me 13 years for turning down two plea offers from the solicitor and one from the trial court judge on August 25, 2008 App 81117-25 App 8211-1-9

Defendant who has pled guilty after judge has participated in plea discussion should be allowed to replead without having to show actual prejudice has resulted from the participation Fed. Rule Cr. Proc Rule 11(c)(1) 18 USCA

I should be able to withdraw my guilty plea because the judge improperly participated in the plea discussion regarding my plea agreement in violation of Fed Rule Cr Proc Rule 11(c)(1)

## Argument

The PCR court did made a mistake in failing to find plea counsel ineffective for not insuring that my guilty plea was enter freely, voluntarily and knowingly

Ullman did not know about any other day but August 21, 2008 which she claim she read App 100-101 to me App 8411 14-21 the document itself stated that I read it myself. Which one is it?

Ullman did not know the first time we met even when she started off looking at her notes then ended it by saying she did not write it down App 7411 16-25 App 7511 1-12 Ullman later said she definitely would have been alone the first time we met App 9211-2-3

Ullman said I definitely want a trial whenever the first time she thought we met and the first time we discussed trial would be August 19 App 7411 16-25 App 7511 1-2 I told the court Ullman did not have no video or my file on Aug 19 so we never discussed anything 6 nor 7 days before my trial date App 5511 5-25

ULLMAN SAID she certainly would not have read everything on the chain of custody paper AND NOT SURE WHAT I would have added she probably would have said this is the best kit App 8811 9-24 Every time Ullman say the word would in any way it was something she did not know or should have done but did not do it.

My First Appearance was on July 7, 2008 Ullman said it would have been roughly around July 9 App 8711 10-20 July 9 is when the det/expired and I told the court Ullman had a lot of no shows she missed my first plea offer along with my second plea offer on August 22 2008 when my family was call to the courtroom App 5811 22-25 App 5911 1-16 Supp App 11 11 4-14

I never had a opportunity to take a more favorable plea with understanding from my counsel in writing from the solicitor in a timely manner App 100-101 was not from the solicitor. On August 25 and 26 of 2008 I stood alone in the courtroom. My Sixth Amendment right was violated which is to have a counsel present at a critical stage of the criminal proceeding Missouri v Frye 132 Sct 1399 (2012) 6

ULLMAN NOT ONLY CONTRADICTED HERSELF BUT MORE IMPORTANTLY FOR THE RECORD ADMITTED SHE WAS INEFFECTIVE BY HER VERY OWN STATEMENTS  
DAVIS V STATE 486 SE 2d 747 SC 1997

ULLMAN SAID SHE FELT SHE GAVE ME ADEQUATE INFORMATION AND ADVICE TO MAKE AN INFORMED AND INTELLIGENT DECISION WHETHER TO PLEA OR NOT App 8311 12-15

ULLMAN SAID SHE HAD EIGHT PRETRIAL PREPARED App 79 11. 15 ULLMAN SAID ONE MOTION WAS TO SUPPRESS THE DRUG DUE TO A FAULTY CHAIN OF CUSTODY App 88 11 19-24.

ULLMAN TOLD THE PCR COURT YES THAT IN ORDER FOR ME TO MAKE AN INFORMED DECISION TO WHETHER TO PLEA OR GO TO TRIAL TELL ME ABOUT OUR STRATEGIES AND PRETRIAL MOTION App 90 11 13-19 ULLMAN ADMITTED TO THE COURT SHE DID NOT TELL ME NO App 88 11. 25 App 89 11 1-4

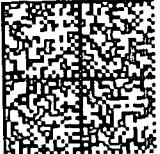
I WAS PREJUDICE BY THE PCR COURT DENYING ME RELIEF TAKING INTO CONSIDERATION THAT I SAID I DID NOT SEE THE VIDEO AT App 97 11 12-15 NOT TRUE I ONLY TOLD THE COURT I DID NOT SEE THE VIDEO ON AUGUST 12 AND THE 19th OF 2008 App 55 11 5-17

I was prejudice the PCR court only took into consideration that the drug enhancement law was explain to me three times when my counsel had twice AS MANY times with one being on August 19 2008 AS my counsel Alleged we discussed fair to prepare me for TRIAL AND to inform me About A faulty chain of custody but she did not do anything App 95 11 1-9 App 96 11 16-25

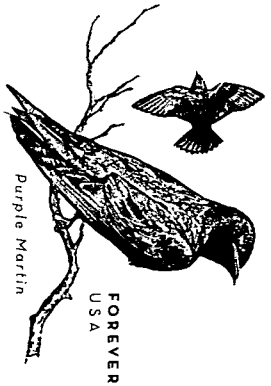
I did show the court I WAS prejudice then later on during the hearing Willman said the same thing I have been saying since August 25 2008 that she have not done ANYTHING AND I had no ideal what she had plan or what to expect from her AS I stated first on App 61 11 18-25 App 62 11 1-18

If not for my counsel unprofessional tactics, errors AND bad or no advice I would not have pled guilty, I would have insisted on going to TRIAL where AS I may have been acquitted also AS my counsel stated on App 9d 11 20-22 Hill v Lockhart 474 US 52 106 Sct 366 (1985) App 61 11 15-25 App 62 11 1-18 App 69 11 20-24 App 70 11 1-17 App 100-101

Cedric Kenese 330288  
1516 Old Gilliard Rd  
Ridgeville SC 29472



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DAVID E. SHEARSON Clerk of Court  
PO Box 11330  
Columbia, S.C. 29211

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