

DOCTOR

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Clifton Newman, Circuit Court Judge

RECEIVED

OCT 23 2013

S.C. Supreme Court

TREMON DOCTOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000479

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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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

On February 14, 2007, the Richland County Grand Jury indicted Tremon Doctor on the charges of murder, carjacking, and armed robbery. On March 31, 2008, Doctor appeared before the Honorable J. Michelle Childs and entered a guilty plea to the lesser included charge to murder of voluntary manslaughter, carjacking, and armed robbery. He was represented by Megan Lee and Micah Leddy. The state was represented by Kathryn Luck Campbell and Eden Hendrick. Judge Childs accepted the negotiated sentence of twenty to thirty years and sentenced Doctor to twenty-five years on the voluntary manslaughter, five years on the carjacking, and ten years on the armed robbery all to run concurrently. App.27, ll. 6 – 19. His attorney filed a notice of appeal. The appeal was perfected by the Division of Appellate Defense of the Commission on Indigent Defense with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Doctor, Op. No. 2009-UP-561 (Ct. App. filed November 23, 2009).

On October 26, 2010, Doctor filed an application for post-conviction relief (PCR). The state filed a return on February 4, 2011. An evidentiary hearing was held on February 14, 2012 before the Honorable Clifton B. Newman. Doctor was represented by Charles T. Brooks, and the state was represented by Rob D. Corney. On February 27, 2013, Judge Newman issued an order denying doctor's PCR application and dismissing it with prejudice. App. 114 – 122. Doctor'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.

Tremon Doctor lived down the street from the victim, Brian Washington, who had been friends with Doctor most of their lives. App. 18, lines 4 – 12. On the day of the incident involving the voluntary manslaughter charge, Doctor allegedly approached Washington as he was walking down the street and a verbal altercation ensued allegedly over money owed. Eye witnesses reported that Doctor picked up a shovel and hit Washington in the leg and in the head. Washington walked home and died on the front porch of his mother's home about 36 hours later. The coroner reported that Washington died as the result of blunt force trauma to the head. App. 5, lines 1 – 25; App. 6, lines 1 – 8.

While Doctor was out on bond, on October 22, 2006, Doctor and a co-defendant were in a van and allegedly approached a girl sitting in a car outside a club. The co-defendant got into the girl's car and forced her to drive while Doctor followed in the van. The girl escaped from the car which was later found wrecked. Doctor and the co-defendant were seen riding in the van a short time later and were arrested after a chase. App. 6, lines 13 – 25; app. 7, lines 1 – 25; App. 8, lines 1-5. Doctor was charged under the hand of one is the hand of all doctrine. App.9, lines 5 – 15.

At Doctor's guilty plea, defense counsel told the court, after the solicitor's recitation of the facts, that they agreed substantially with the facts, but there were some differences they wanted to distinguish. The first one was that Brian Washington came into Doctor's front yard. Also, Washington walked himself back to his home; Doctor did not carry him. App. 8, ll. 6 – App. 9, ll. 25.

At his PCR hearing, Doctor testified that he would not have pled guilty if he had known then what he knew now, but would have gone to trial. App. 70, ll. 5 – 25. He wanted a new trial because his guilty plea was not voluntary. App. 58, ll. 21 – App. 59, ll. 25. If he had known that his attorney was wrong about the possibility of his getting LWOP because the state had not served him with notice of life without parole, he would not have pled guilty. He did not know he could have requested a mere presence charge on the armed robbery and carjacking because he was not a participant. App. 62, ll. 1 – 25.

Doctor learned on his own from the law library in prison that he had a self-defense claim on the murder charge because the deceased, Washington, came to Doctor's house, and attacked Doctor with a beer bottle. App. 69, ll. 1 – 25. His attorney never discussed the possibility of a self-defense theory. His attorney never discussed the castle doctrine with him which would have made him immune to prosecution. App. 71, ll. 1 – 25. His attorney talked to him only about pleading guilty. App. 72, ll. 10 – App. 73, ll. 4.

Trial counsel, Megan Lee, did not attend the PCR hearing because she had relocated to England. Micah Leddy served as second chair in the case in the event it went to trial. He testified at the PCR hearing. App. 78, ll. 1 – App. 80, ll. 4. Attorney Leddy testified that he and Ms. Lee advised Doctor to plead guilty because he could have been facing life at trial. Leddy explained that their concern was, because the charges stemmed from two different incidents, that the state might prosecute them in two different trials which would be LWOP based on two most serious charges if convicted. App. 80, ll. 5 – App. 81, ll. 15. He admitted that he knew that Doctor wanted to have a trial. App. 83, ll. 1 – 18.

The PCR judge ruled that he found Doctor's claim of ineffective assistance of counsel to be wholly without merit. App. 119. Doctor failed to prove resulting prejudice from counsel's alleged

deficient representation. App. 120. The order stated that Doctor failed to prove that but for counsel's deficiency, he would not have pled guilty but would have insisted on going to trial. App. 120.

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).

Plea counsel was ineffective for not insuring that Doctor wanted to plead guilty. The fact that Doctor disagreed with the facts should have been a notice to counsel that Doctor had doubts about pleading guilty. Counsel should have investigated the possibility of the self-defense theory.

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,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of October, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

TREMON DOCTOR,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000479

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tremon Doctor 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 February 14, 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 Tremon Doctor.

Respectfully submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of October, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

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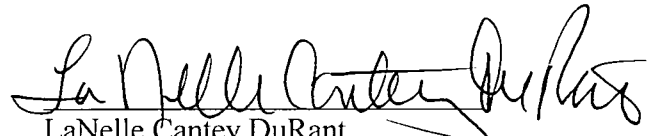
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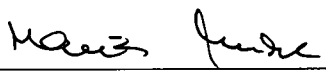
CERTIFICATE OF SERVICE

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 Megan Harrigan, Esquire and Tremon Doctor, #280808, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 23rd day of October, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of October, 2013.

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