

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

William Jeffrey Young, Circuit Court Judge

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NOV - 7 2013

S.C. Supreme Court

BARRY REYNOLD STYLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000863

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 because petitioner believed he was pleading guilty to involuntary manslaughter when he actually pled guilty to voluntary manslaughter?

STATEMENT

In December 2009, the Greenville County Grand Jury indicted Barry Reynolds Styles on the charges of murder and possession of a weapon during the commission of a violent crime. On March 31, 2010, Styles appeared before the Honorable Edward W. Miller and entered guilty pleas to the lesser charge of voluntary manslaughter and possession of a weapon during a crime of violence, Styles was represented by Daniel Farnsworth, and the state was represented by Christy Sustakovitch and Allen Fretwell. The state recommended a sentence of thirty years. App. 14, ll. 4 – 12. Judge Miller sentenced Styles to twenty years on the manslaughter and five years on the gun charge. App. 22, ll. 12 – 21. Styles did not file an appeal. App. 134.

On July 9, 2010, Styles filed an application for post-conviction relief (PCR). The state filed a return on December 22, 2010. An evidentiary hearing was held on February 14, 2013 before the Honorable W. Jeffrey Young. Styles was represented by Denny P. Major, and the state was represented by Karen Ratigan. On March 15, 2013, Judge Young issued an order denying Styles' PCR application and dismissing it with prejudice. App. 133 – 140. Styles' 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 because petitioner believed he was pleading guilty to involuntary manslaughter when he actually pled guilty to voluntary manslaughter.

Barry Styles was selling tires at a lot near his house. Tony Thompson came to Styles and asked if he would like to sell tires at Thompson's location as Thompson was a detailer. Styles moved his business to Thompson's location. App. 108, ll. 3 – 24. However, frequent arguments began occurring.

On October 25, 2008, Styles and his wife went to the tire location to work on his truck brakes. Thompson was leaving but stopped at the entrance of the property blocking Styles from leaving. Thompson approached Styles and said he did not like the fact that Styles was getting fifty dollars from selling tires for Thompson's father-in-law. Styles sold the tires for \$260 and gave Thompson \$210. App. 108, ll. 25 – App. 110, ll. 24.

Thompson was getting upset with Styles and Styles told him to go home. Styles told Thompson he would give him the money. Styles said Thompson then pulled a knife, and told Styles "he was going to mess him [Styles] up." Styles pulled a gun and shot Thompson six times with five of the shots being in the back. Styles remembered only the first shot. App. 110, ll. 25 – App. 113, ll. 4; App. 12, ll. 4 – App. 14, ll. 12.

PCR counsel told the PCR judge, at the beginning of Styles' PCR hearing, that the primary argument was that Styles believed he was pleading guilty to involuntary manslaughter when he actually pled guilty to voluntary manslaughter. Counsel said that the plea judge said at the beginning of the plea that Styles was pleading to involuntary manslaughter. App. 102, ll. 11 – 22.

Styles told the PCR court that he and his wife and stepson met with Styles' plea counsel that he had retained. Plea counsel told Styles that he would try to get a plea for involuntary manslaughter which carried only 1-5 years as opposed to going to trial where he could get at least thirty years. Styles signed a sentencing sheet that was blank. App. 113, ll. 5 – App. 115, ll. 25. Styles testified that he trusted his attorney to do the job that Styles hired him to do. App. 125, ll. 3 – 19.

Styles testified that the plea judge said at the beginning of the plea that Styles was pleading to involuntary manslaughter which carried two to thirty years. His plea counsel told Styles not to worry about that as he would explain it later. App. 116, ll. 21 – App. 118, ll. 8' App. App. 6, ll. 4 – 14. Styles would have gone to trial if he had known he was pleading to voluntary manslaughter. App. 119, ll. 5 – 21.

Styles' wife, Lyla, testified at the PCR hearing that she heard plea counsel ask Styles if he would plead to involuntary manslaughter. It was her understanding that a plea deal had been reached for a plea to involuntary manslaughter. App. 103, ll. 2 – App. 105, ll. 24.

Orlando Fuller, Styles' stepson, testified at the PCR hearing that he attended the meeting at plea counsel's office with Styles and Lyla Styles. His understanding was that plea counsel was trying to get Styles to plead guilty to involuntary manslaughter. App. 106, ll. 14 – App. 107, ll. 13.

At the beginning of the PCR hearing, the state's attorney informed the court that plea counsel was not present as he had suffered a stroke and was not able to be present. He was medically unable to practice law. The state's attorney and Styles' PCR attorney had decided to go forward on the "four corners of the plea transcript." App. 101, ll. 1 – App. 102, ll. 10.

The PCR judge ruled that Styles failed to meet his burden of proving plea counsel advised him he would be pleading guilty to involuntary manslaughter. The judge found Lyla Styles' testimony

to not be credible, and the judge found Styles' testimony that he believed he was pleading to involuntary manslaughter to not be credible. App. 137. The judge wrote that Styles did not meet his burden of proof that plea counsel was ineffective. App. 136.

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).

The PCR judge said to Styles at the beginning of the guilty plea:

Mr. Styles, you're up here on Indictment 09-9897, count one alleges you did in Greenville County, October 25, 2008, unlawfully with malice aforethought kill Anthony Thompson by means of a gunshot. He died as a proximate result thereof. Involuntary manslaughter carries two to thirty years; this is a violent offense, a most serious offense. It means no parole and it means if you get convictions for two or more serious offense, you're eligible for life in prison without parole.

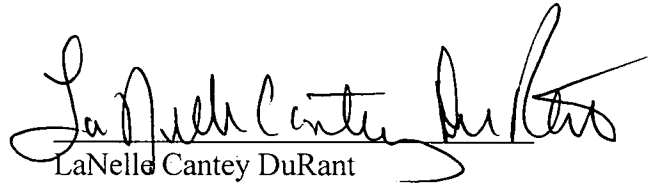
App. 6, ll. 4 – 13.

It was reasonable for Styles to believe he was pleading to involuntary manslaughter. Plea counsel was ineffective for not insuring that Styles understood fully the charge he was pleading guilty to and the consequences of that plea.

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 initial "L" and a long horizontal stroke at the end.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

BARRY REYNOLD STYLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

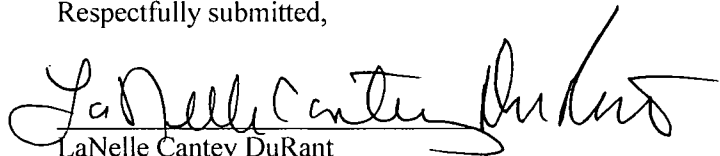
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Barry Reynolds Styles 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, 2013. 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 Barry Reynolds Styles.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of November, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

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BARRY REYNOLD STYLES,

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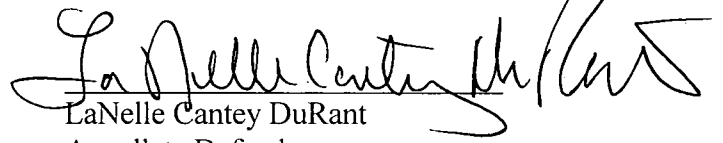
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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 Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Barry Reynolds Styles, #123115, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 7th day of November, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of November, 2013.

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