

RECEIVED

NOV 22 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

William Jeffrey Young, Circuit Court Judge

SHANE LAMAR MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001044

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 PRESENTED2
STATEMENT3
ARGUMENT4
CONCLUSION7
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 because petitioner believed he could still appeal the denial of his suppression motion of the drugs?

STATEMENT

In April 2009, the Greenville County Grand Jury indicted Shane Moore on the charge of trafficking cocaine base more than twenty-eight grams. On September 15, 2010, Moore appeared before the Honorable Edward W. Miller and entered a guilty plea to trafficking cocaine base more than twenty-eight grams second offense. Moore was represented by Dorothy Manigault, and the state was represented by Joyce Montz. Judge Miller sentenced Moore to fifteen years and a \$50,000 fine. App. 14, ll. 12 – 19. Moore's attorney filed a notice of appeal which was dismissed by the South Carolina Court of Appeals on January 5, 2011 based on plea counsel's failure to provide a written explanation as to the issues for review. Counsel filed a written explanation which the Court of Appeals interpreted as a petition for rehearing. The Court of Appeals dismissed the appeal by order dated February 2, 2011 finding there were no preserved issue for appeal. App. 94.

On May 10, 2011, Petitioner Moore filed an application for post-conviction relief (PCR). The state filed a return on August 18, 2011. An evidentiary hearing was held on February 15, 2013 before the Honorable W. Jeffrey Young. Petitioner Moore was represented by Caroline M. Horlbeck, and the state was represented by Karen Ratigan. On April 11, 2013, Judge Young issued an order denying Moore's PCR application, and dismissing it with prejudice. App. 93 – App. 101. Moore'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 because petitioner believed he could still appeal the denial of his suppression motion of the drugs.

On March 17, 2008, Shane Moore was stopped on I-85 by a South Carolina Highway Patrol trooper for following too closely and impeding traffic. After issuing a ticket, the officer called for a drug dog and conducted a search of Moore's vehicle. Crack cocaine in the amount of 142.83 grams was found in the false bottom of a coffee can in the trunk. The crack was packaged in individual baggies. The vehicle belonged to Moore and he was driving. App. 8, ll. 1 – 17.

A suppression hearing was held on September 15, 2010 on the motion of defense counsel to suppress the drugs based on the illegal stop, detention, and the search. The suppression motion was denied. App. 35, ll. 4 – 22; App. 70, ll. 18 – App. 73, ll. 25.

On September 15, 2010, after the suppression motion was denied, Moore pled guilty to trafficking crack second offense and received a fifteen year sentence. App. 4, ll. 12 – 25; App. 14, ll. 12 – 19.

During the guilty plea, Moore said the only complaint he had was losing the suppression motion. App. 7, ll. 12 – 16.

At his PCR hearing, Moore testified that he only pled guilty because his attorney told him that he could appeal the denial of the suppression motion. App. 38, ll. 5 – 25. He had every intention of going to trial. App. 39, ll.1-2. Moore denied that the plea judge explained to him that by pleading guilty, he waived everything about the suppression hearing. App. 40, ll. 25 – App. 41, ll. 4. He believed that he was entering a conditional plea because his attorney told him that she would file the appeal of the denial of the suppression hearing. If he had known he waived the right to appeal the

suppression hearing, he would not have pled guilty but would have gone to trial. App. 57, ll. 12 – App. 58, ll. 17.

Plea counsel testified at the PCR hearing that she filed the suppression motion to suppress the drugs because she believed the stop and search were illegal. When the suppression motion was denied, Petitioner wanted to plead guilty. App. 70, ll. 18 – App. 73, ll. 25.

Plea counsel told Petitioner that if he pled guilty, all of the issues related to the suppression motion would be waived. She told him he waived the right to challenge anything about the suppression hearing when he pled guilty. App. 74, ll. 1 – 25.

The PCR judge held that he found plea counsel's testimony to be credible while he found Petitioner's testimony to not be credible. App. 98. The PCR judge ruled that Petitioner Moore failed to meet his burden of proof that his guilty plea was not knowing and voluntary. Moore also failed to prove that plea counsel did not render reasonably effective assistance under prevailing professional norms. App. 100.

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).

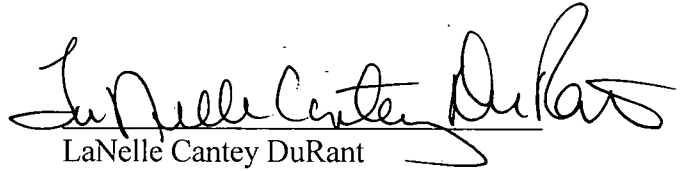
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (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 court erred in not finding plea counsel ineffective for not insuring that Moore understood clearly that he waived his right to appeal the denial of his suppression motion.

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", written in a cursive style.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

SHANE LAMAR MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001044

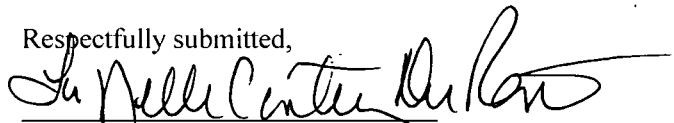
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shane Lamar Moore 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 15, 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 Shane Lamar Moore.

Respectfully submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

William Jeffrey Young, Circuit Court Judge

SHANE LAMAR MOORE,

PETITIONER,

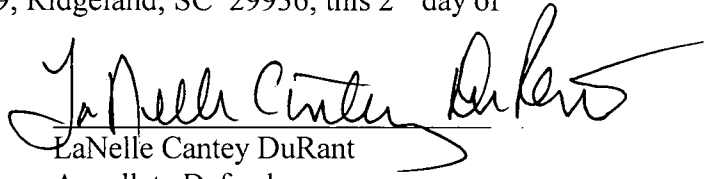
V.

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 Shane Lamar Moore, #342772, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 2nd day of November, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of November, 2013.

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