

D-11111

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

John C. Hayes, III, Circuit Court Judge

S.C. Supreme Court

JOHN EDWARD BURCHFIELD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001331

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 plea counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly?

STATEMENT

In March 2012, the York County Grand Jury indicted John Edward Burchfield on the charges of entering a bank with intent to steal and possession of a hoax destructive device. On April 2, 2012, Burchfield appeared before the Honorable Lee S. Alford and entered a guilty plea to both charges as indicted. Burchfield was represented by Casey Cornwell, and the state was represented by E.B. springs, IV. Judge Alford sentenced petitioner to ten years on entering a bank with the intent to steal, and one years concurrent on the possession of a hoax destructive device. App. 17, ll. 12 – 25. Burchfield did not appeal his convictions or sentences.

On August 1, 2012, Burchfield filed an application for post-conviction relief (PCR). The state filed a return on October 18, 2012. An evidentiary hearing was held on May 16, 2013 before the Honorable John C. Hayes, III. Burchfield was represented by Justin D. Bice, and the state was represented by J. Rutledge Johnson. On May 28, 2013, Judge Hayes issued an order denying Burchfield's PCR application and dismissing it with prejudice. App. 50 – 54. Burchfield'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

On January 3, 2012, at nine o'clock in the morning, the police were called to the Citizens South Bank due to a bank robbery. The employees reported that the robber told them he had a bomb that he left in the bank. He was given money and then fled. App. 11, ll. 13 – 25.

The bank employees provided a description of the robber. As the police were searching the area, they asked a cab driver if he had picked someone up just recently. He said no but he had a call to get someone. The police followed, and saw a man matching the description and a woman get in the cab. The police stopped him, and learned it was Burchfield. Burchfield confessed, and cooperated fully with the police. He told them the bomb was a fake, and he returned all of the \$1769 from the robbery. App. 12, ll. 1 – App. 13, ll. 24.

The state charged Burchfield with armed robbery (AR) in addition to the entering the bank with intent to steal, and the possession of a hoax destructive device. App. 4, ll. 1 – 12. However, after a bench conference with the plea judge, the state dropped the AR charge. App. 5, ll. 1 – 22.

The state offered a negotiated sentence range of ten to fifteen years. Judge Hayes sentenced Burchfield to ten years on the entering the bank charge and one year on the possession of a hoax destructive device to run concurrently. App. 17, ll. 12 – 25.

At his PCR hearing, Burchfield testified that his plea counsel was ineffective because he saw his counsel about five minutes before they entered the court to plead guilty. That was the only time he saw his plea counsel. App. 37, ll. 4 – App. 38, ll. 9. Burchfield admitted his guilt at the PCR hearing. App. 43, ll. 1 – 18.

Plea counsel testified that Burchfield always wanted to plead guilty. Counsel said he met with Burchfield at least twice but it was difficult for him to recall. App. 45, ll. 1 – 2.

The PCR judge found that Burchfield's claim of ineffective assistance of counsel was without merit. App. 53.

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

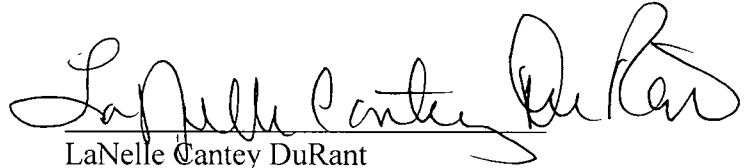
relinquishment or abandonment of a known right or privilege.” State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give the defendant an explanation of the defendant’s waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

Plea counsel was ineffective for not visiting with Burchfield a sufficient number of times to insure that Burchfield was entering a guilty plea knowingly and voluntarily.

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 cursive script, reading "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
JOHN C. HAYES, III, CIRCUIT COURT JUDGE

JOHN EDWARD BURCHFIELD,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-001331

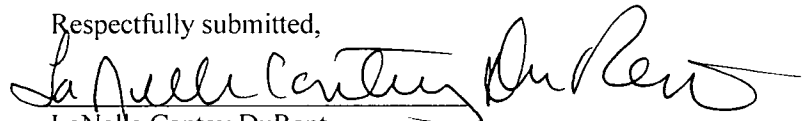
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Edward Burchfield 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 May 16, 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 John Edward Burchfield.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 15th day of January, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

John C. Hayes, III, Circuit Court Judge

JOHN EDWARD BURCHFIELD,

PETITIONER,

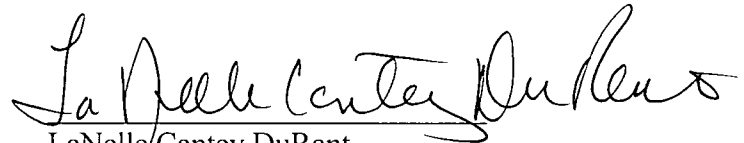
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

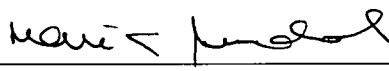
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. John Edward Burchfield, #350403, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 15th day of January, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of January, 2014.

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