

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
Alison Renee Lee, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

JAN 22 2014

**S.C. Supreme Court**

WILLIE GOODWIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000974  
\_\_\_\_\_

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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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

# INDEX

INDEX.....	1
ISSUE PRESENTED .....	2
STATEMENT .....	3
ARGUMENT .....	4
CONCLUSION .....	8
PETITION TO BE RELIEVED AS COUNSEL.....	9

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 January 2008, the Richland County Grand Jury indicted Willie Goodwin on five counts of distribution of marijuana third offense. On June 10, 2009, Goodwin appeared before the Honorable J. Michelle Childs and entered a guilty plea to the five counts of distribution as indicted and one count of failure to stop for a blue light (FTSBL). He waived presentment to the Grand Jury on the FTSBL. Goodwin was represented by J. Rhodes Bailey, and the state was represented by Andrew Rogers and D.J. Carson. Judge Childs sentenced Goodwin to concurrent sentences of twelve years on each of the marijuana distribution charges and eighteen months on the FTSBL. App. 28, ll. 1 – 14. Goodwin's attorney filed a Motion to Reconsider the Sentence. A hearing was held before Judge Childs on October 22, 2009. Goodwin was again represented by J. Rhodes Bailey, and the State by D.J. Carson. Judge Childs denied the motion on the record by declaring the sentences were proper. App. 49, ll. 6 – 7.

Goodwin filed an appeal which was perfected by the Division of Appellate Defense in the Commission on Indigent Defense. The Court of Appeals affirmed Goodwin's convictions and sentences on February 29, 2012. State v. Goodwin, 2012-UP-124 (Ct. App. filed February 29, 2012).

On March 2, 2012, Goodwin filed an application for post-conviction relief (PCR). The state filed a return on June 13, 2012. An evidentiary hearing was held on March 5, 2013 before the Honorable Alison Renee Lee. Goodwin was represented by Robert Russo, and the state was represented by Rob Corney. On March 25, 2013, Judge Lee issued an order denying Goodwin's PCR and dismissing it with prejudice. App. 120-128. Goodwin'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

Willie Goodwin was charged with selling marijuana to an undercover police officer five times and was caught on video each of the times. App. 25, ll. 1 – 5. The dates were January 31, 2007 (two sales); February 2, 2007; February 26, 2007; January 23, 2009 which was the FTSBL when marijuana found in the car. The amounts of marijuana ranged from 22.67 grams to 28.43 grams. App. 8, ll. 7 – App. 11, ll. 5.

At the guilty plea, Goodwin's plea counsel argued to the court that the state refused to lower the charges under a third offense although no violence nor guns were involved. Counsel asked the court for the minimum sentence of five years. App. 20, ll. 1 – App. 22, ll. 7.

The state argued that numerous community members were interested in a stiffer sentence because they were fighting to remove the criminal element from their community. App. 12, ll. 2 – App. 13, ll. 11. Defense counsel opposed any members of the community speaking at the guilty plea because he argued they were not victims. The state argued that Goodwin totally disregarded the rules and laws of the community. The state asked for a fifteen year sentence. App. 13, ll. 8 – App. 15, ll. 12.

The judge sentenced Goodwin to twelve years. App. 28, ll. 1 – 12.

Defense counsel filed a Motion to Reconsider the Sentence, and a hearing was held before Judge Childs on October 22, 2009. Defense counsel argued that he sentence of twelve years was inappropriate to the offense. Counsel argued that the concern of the community was influential in the sentencing and they community members were not victims. Goodwin had no violent charges on his record, and these were not trafficking charges. App. 32, ll. 1 – app. 39, ll. 8.

Judge Childs stated that she did not consider the concerns of the community in sentencing. App. 47, ll. 1 – App. 48, ll. 24.

At his PCR hearing, Goodwin testified that he thought he going to get a five year sentence when he pled guilty because his attorney told him the attorney believed he could get five years. The attorney told him to go ahead and plead to the FTSBL although Goodwin said he did not commit that charge. If he had known he was getting twelve years, Goodwin would not have pled guilty. App. 69, ll. 1 – App. Goodwin admitted his guilt and said all he wanted was to be resentenced for the five years. App. 78, ll. 18 – 22.

Goodwin's plea counsel testified that the twelve years was excessive for the marijuana charge, and he was surprised at this sentence. App. 86, ll. 15 – App. 87, ll. 24. Counsel said he would do things differently if he had a second chance. He misjudged the "zeal of the prosecutor." App. 91, ll. 1- 25. Counsel though he could convince the judge to give Goodwin the five year sentence. He felt he was over confident. He felt this was his fault as he told Goodwin he thought he could get the five years. App. 92, ll. 1- App. 95, ll. 25.

The PCR judge ruled at the PCR hearing that she found Goodwin's testimony that he was not aware of what he was facing to not be credible. The judge also stated at the hearing that she found Goodwin to not be credible that he would not have pled if he had known he was getting twelve years. The PCR judge denied Goodwin's PCR application. App. 115, ll. 9 - App. 118, ll. 24.

In her order, the PCR judge wrote that she found Goodwin's testimony to not be credible, and that he failed to meet his burden of proof that plea counsel was deficient in his representation. The judge found that Goodwin's guilty plea was freely, voluntarily, and intelligently entered in accordance with Boykin v. Alabama, 395 U.S. 238 (1969). App. 124 – App. 125.

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).

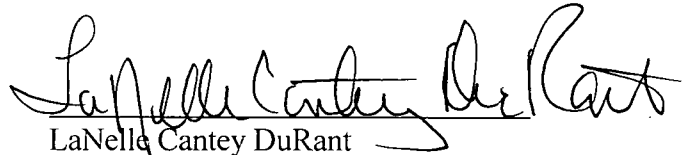
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (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 telling Goodwin counsel thought he could get the five years.  
Plea counsel was ineffective for not insuring that Goodwin understood exactly what could happen—  
that the plea judge could give any sentence within the range.

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, sweeping initial "L".

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 22<sup>nd</sup> day of January, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
ALISON RENEE LEE, CIRCUIT COURT JUDGE

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WILLIE GOODWIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000974

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Willie Goodwin states:

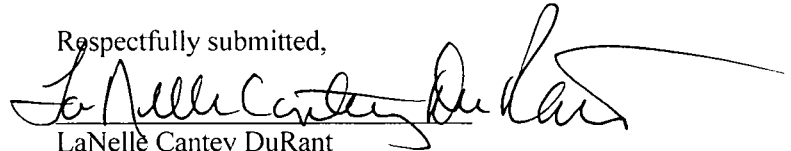
1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on March 5, 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 Willie Goodwin.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 22<sup>nd</sup> day of January, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
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WILLIE GOODWIN,

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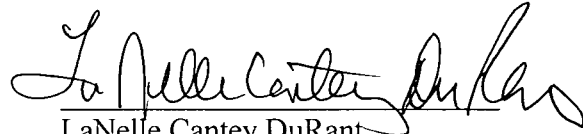
RESPONDENT

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CERTIFICATE OF SERVICE

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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, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Willie Goodwin, #181207, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 22<sup>nd</sup> day of January, 2014.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22<sup>nd</sup> day  
of January, 2014.

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