

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County

Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

MAY - 7 2014

S.C. Supreme Court

BRUCE WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001275  
\_\_\_\_\_

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 PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 5

CONCLUSION ..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

ISSUE PRESENTED

Did the PCR court err in failing to grant Petitioner Wilson's PCR based on his newly discovered evidence that the plea court lacked subject matter jurisdiction because he did not have a preliminary hearing?

## STATEMENT

In April 2005 and July 2005, the Richland County Grand Jury indicted Bruce Wilson on four counts of armed robbery (AR). On January 4-5, 2006, Wilson proceeded to trial before the Honorable James W. Johnson and a jury. Wilson was represented by Katherine Hudgins, and the state was represented by Kathryn Luck Campbell and Margaret Fent. On January 5, 2006, after the trial had proceeded, Wilson entered a guilty plea before Judge Johnson to three counts of AR. App. 227, ll. 1 – 17. The fourth AR was *nolle prossed* by the state. Judge Johnson sentenced Wilson to three concurrent terms of twenty-three years on the three AR. App. 242, ll. 8 – 25. Wilson did not appeal his convictions nor sentences.

Wilson filed an application for post-conviction relief (PCR) on May 23, 2006. (2006-CP-40-2981). An evidentiary hearing was held on August 1, 2007 before the Honorable James C. Williams. Wilson was represented by Charlie J. Johnson, and the state was represented by Robert L. Brown. On September 18, 2007, Judge Williams filed an order denying Wilson's PCR and dismissing it with prejudice. Supp App. 77 – 84. Wilson did not file an appeal. App. 345.

On September 21, 2010, Wilson filed a second PCR (2010-CP-40-6562) based on newly discovered evidence. App. 245 – 249. The state filed a return and motion to dismiss on October 4, 2011. On April 16, 2012, Judge James R. Barber, III, issued a Conditional Order of Dismissal allowing Wilson thirty days to submit his objections. App. 263-268. On August 31, 2012, Wilson filed an amendment to his PCR application based on his newly discovered evidence and also claiming his PCR attorney failed to file an appeal of the first PCR judge's order denying his PCR. App. 270-271. Based on Wilson's response, Judge Barber requested a hearing be set on Wilson's second PCR application. App. 343.

On October 18, 2012, an evidentiary hearing was held before the Honorable Clifton B. Newman. Wilson was represented by C. Clifford Rollins, and the state was represented by Robert D. Corney. App. 272. On February 19, 2013, Judge Newman filed an order denying Wilson's PCR application and dismissing it with prejudice. Judge Newman denied Wilson's request for a belated appeal of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

On January 16, 2013, Wilson filed a motion to reconsider under Rule 59(e), SCRPC. The state filed a return to the motion on February 27, 2013. An evidentiary hearing was held on April 2, 2013 before the Honorable Clifton B. Newman. Wilson was represented by Cliff Rollins, and the state was represented by Megan Harrigan. App. 355 – 364. On May 20, 2013, Judge Newman issued an order denying Wilson's motion to reconsider under rule 59(e), SCRPC. Wilson filed a notice of appeal. This petition follows. A petition pursuant to Austin v. State, Id. listing the issues to be considered should the Court grant the belated appeal of Wilson's first PCR, is being filed concurrently with this Johnson petition.

## ARGUMENT

The PCR court erred in failing to grant Petitioner Wilson's PCR based on his newly discovered evidence that the plea court lacked subject matter jurisdiction because he did not have a preliminary hearing.

Petitioner Wilson proceeded to trial on an armed robbery of the Pantry Express located at a Shell station in Columbia. App. 160, ll. 16 – App. 164, ll. 10. After pretrial motions and following the testimony of three witnesses, Wilson entered a guilty plea before the conclusion of the trial. He pled guilty to three armed robberies. A fourth armed robbery charge was *nolle prossed*. App. 227, ll. 1 – App. 242, ll. 25. Wilson did not appeal his convictions nor sentences. App. 344.

At his PCR hearing on October 18, 2012, the state's attorney explained to the court that Wilson was bringing this second PCR based on newly-discovered evidence and his request for a belated appeal of his first PCR which was never filed. App. 272 – App. 275, ll. 14.

Wilson was arrested December 20, 2004 on the AR charges. He testified that his first attorney had requested a preliminary hearing on the four charges of AR on December 28 and 30, 2004. But a preliminary hearing was never held. App. 278, ll. 1 – App. 279, ll. 25. A second attorney was appointed to represent him for his trial and guilty plea. His case was indicted in April 2005, and his trial date was January 3, 2006. App. 279, ll.1 – 10; App. 280, ll. 12 – 21.

Wilson testified that he did not know that a preliminary hearing was scheduled for March 10, 2005, and was continued. He learned this after his first PCR in some paperwork he received from the court when he requested some documents. App. 280, ll. 1 – 16; App. 317. His claim for this second PCR was on the newly discovered evidence that the general sessions court did not have jurisdiction to try his case or to take his guilty plea because jurisdiction was still in the magistrate's

court. He had requested a preliminary hearing which was never held so jurisdiction remained with the magistrate. App. 282, ll. 1 – App. 283, ll. 10.

Although his first PCR hearing was in August 2007, he did not file anything about this issue because he did not know that his first PCR had been decided because his first PCR attorney left the law firm he was working with and did not notify Wilson how to get in touch with him. App. 284, ll. 1 – 21. He learned of the status of his first PCR in 2009 when he wrote the court, and they finally sent him paperwork with the disposition of his first PCR application. App. 288, ll. 1 – App. 289, ll. 25. He filed this second PCR September 21, 2010. App. 294, ll. 1 – 24.

Wilson's trial attorney testified that she was appointed to represent him in April 2005. His case had already been indicted so he was not entitled to a preliminary hearing at that point. Therefore, she did not discuss a preliminary hearing with Wilson. App. 298, ll. 20 – App. 299, ll. 22. She knew nothing about a preliminary hearing having been scheduled, and had no concern about subject matter jurisdiction of the trial court. She did testify at the first PCR hearing. App. 299, ll. 23 – App. 301, ll. 25.

Wilson's first PCR attorney also testified. He admitted that he changed law firms by starting his own firm and probably did not notify Wilson of the change. It was his normal standard to file an appeal, but in this case, if an appeal was not filed, he admitted that it was his fault. He thought the paperwork must have been "mixed up" in his changing firms. Nevertheless, he said that Wilson did have a right to an appeal. App. 296, ll. 12 – App. 297, ll. 23.

The attorney also testified that the issue of subject matter jurisdiction was not brought up at the first PCR because neither he nor Wilson knew about it at that time. App. 298, ll. 1 – 10.

The PCR judge ruled in his order of dismissal that Wilson waived his right to a preliminary hearing when he pled guilty with no mention of a preliminary hearing or jurisdiction. The judge

held that the claim of subject matter jurisdiction was without merit because once the charge was true billed by the grand jury, Rule 2(b), SCRCrimP, provided that no preliminary hearing would be held after indictment. Wilson's charge of AR were true billed on April 20, 2005 which was after the preliminary hearing had been continued. The judge denied this allegation. App. 348- App. 350.

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).

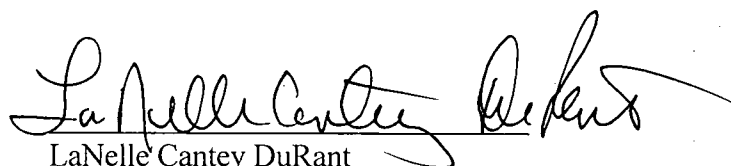
The Supreme Court held in Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981), failure to conduct a properly demanded preliminary hearing deprives a court of general sessions of jurisdiction. S.C. Code Section 22-5-320 also provides that a magistrate shall hold a preliminary hearing within twenty days when it has been requested in writing, and that the magistrate shall retain jurisdiction until after the preliminary hearing is held.

There was no evidence that Wilson knew he was waiving his right to a preliminary hearing when he pled guilty. The PCR court should have granted Wilson a new trial based on his newly discovered evidence.

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, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO RICHLAND COUNTY  
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

---

BRUCE WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

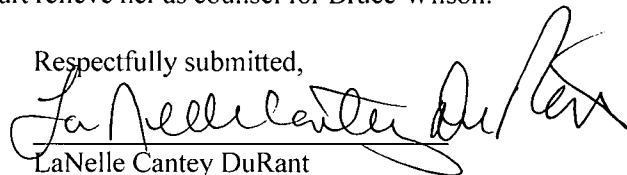
---

Counsel for Bruce Wilson 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 April 2, 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 Bruce Wilson.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of May, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County

Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

BRUCE WILSON,

PETITIONER,

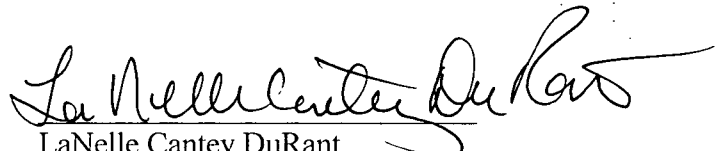
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

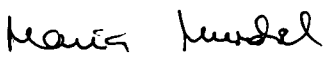
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Johnson petition for writ of certiorari in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Bruce Wilson, #192733, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 7th day of May, 2014.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day  
of May, 2014.

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