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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Beaufort County

Deadra L. Jefferson, Circuit Court Judge

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QUINCY HOLMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002566

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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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 March 2011, the Beaufort County Grand Jury indicted Quincy Holmes on the charge of burglary first degree. On May 21, 2012, Holmes appeared before the Honorable Markley Dennis, Jr. and entered a guilty plea to the charge as indicted. Holmes was represented by James Bell, and the state was represented by Meredith Bannon. App. 1. Judge Dennis sentenced Holmes to eighteen years. App. 34, ll. 1 – 8. Holmes did not appeal his conviction or sentence.

On January 9, 2013, Holmes filed an application for post-conviction relief (PCR). The state filed a return on February 22, 2013. An evidentiary hearing was held on August 26, 2013 before the Honorable Deadra L. Jefferson. Holmes was represented by Charles Brooks, and the state was represented by Ashleigh Wilson. App. 52-53. On November 6, 2013, Judge Jefferson issued an order denying Holmes' PCR application and dismissing it with prejudice. App. 90 – 102. Holmes' 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.

At Holmes' guilty plea, the state presented the facts that on March 4, 2011, Holmes and a co-defendant, Bryce DeBerry, entered the apartment of one of the neighbors of Holmes's wife who lived in the same apartment building as Holmes' wife. Numerous items such as a television and Playstation were taken. Holmes was identified through items found near the apartment including a pair of distinctive gloves. Earlier in the evening, an officer offered Holmes a ride as Holmes was walking down the street. The officer had checked Holmes' bag for weapons and saw this same pair of distinctive gloves. App. 16, ll. 21 – App. 17, ll. 25.

When law enforcement arrived, Holmes approached them and said he and the co-defendant had been at his wife's apartment smoking marijuana and just decided to break into this home. Holmes said he was only the look-out and the co-defendant DeBerry broke into the house. DeBerry stated the opposite. The state found DeBerry's story more credible so DeBerry was going to testify against Holmes at trial. App. 18, ll.1 - App. 18, ll. 19.

When the judge asked if these facts were correct, Holmes replied no. Holmes said he was only guilty under the hand of one is the hand of all because he was only helping a friend. He tried to talk the co-defendant out of doing this. However, he admitted that he knew what was happening. Holmes said he had no choice but to plead guilty. He knew he would get more time if he were found guilty. App. 18, ll. 20 – App. 22, ll. 25.

At the beginning of the plea hearing, the judge said they had selected a jury but which had not been sworn when Holmes decided to plead guilty. The judge then said this was a negotiated plea because negotiated was checked on the plea sheet. The state responded that this was a straight up

plea, and the negotiated was an error. Defense counsel agreed that this was a plea without any recommendations. Holmes said when he signed the sentencing sheet, negotiated was checked. However, he understood now that it was not negotiated. Plea counsel said that was his fault for not clarifying with Holmes that the negotiated was incorrect. App. 3, ll. 1 – App. 5, ll. 23.

Holmes told the plea court that he was not satisfied with his attorney but could not name a specific problem. Holmes was pushing for a trial but felt information was being withheld from him. App. 10, ll. 15 – App. 13, ll. 4.

At his PCR hearing, Holmes testified that he wanted a new trial because his plea attorney provided ineffective assistance of counsel. His plea counsel did not inform him of any possible defenses, and failed to investigate his case at all. Then his counsel told him his plea was negotiated for fifteen years, and advised him to take it. However, it was not negotiated. Holmes signed the sentencing sheet thinking it was a negotiated plea for fifteen years, and he got eighteen. App. 59, ll. 1 – App. 62, ll. 19.

His attorney did not come to see him when he was in the county jail to try to build a defense or have some direction they were going. His attorney never gave him the opportunity to explain. App. 63, ll. 14 – Ap. 64, ll. 3.

Plea counsel testified that the only defense Holmes possibly had was mere presence. However, Holmes gave some statements that could hurt him. Counsel admitted he did not investigate because he saw nothing to investigate. Initially, there was a plea offer of fifteen years but Holmes rejected that. Counsel also admitted that it was an oversight on his part that the sentencing sheet had negotiated marked. App. 74, ll. 1 – App. 80, ll. 20

The PCR judge ruled that she found that Holmes failed to meet his burden of proof that plea counsel was ineffective. The judge found plea counsel's testimony to be credible while she found

Holmes' testimony to not be credible. The PCR order provided that plea counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation expected of an attorney who practices criminal law in South Carolina. The order stated that plea counsel adequately investigated Holes' case prior to trial, and discussed the only defense of mere presence with Holmes. The guilty plea was voluntarily and knowingly made. App. 98 – App. 101.

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

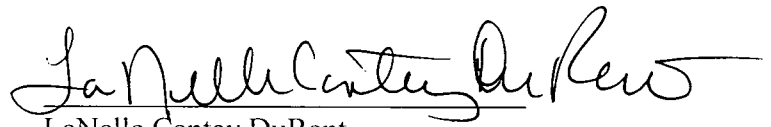
S. Ct. 1709 (1969). The record must show with certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege.” State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give the defendant an explanation of the defendant’s waiver of his constitutional 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 explaining to Holmes before the plea that this was a straight up plea, and for not conducting any investigation of the case.

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 17th day of June, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO BEAUFORT COUNTY  
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

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QUINCY HOLMES,

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PETITION TO BE RELIEVED AS COUNSEL

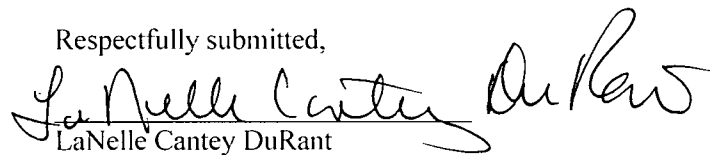
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Counsel for Quincy Holmes states:

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 August 26, 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 Quincy Holmes.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 17th day of June, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Beaufort County  
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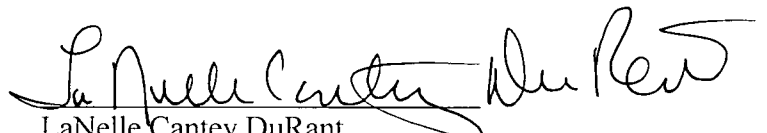
RESPONDENT

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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 Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Quincy Holmes #303469, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 17th day of June, 2014.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day  
of June, 2014.

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