

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge  
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**RECEIVED**

JUN 19 2014

**S.C. Supreme Court**

JOSEPH DOMINICK URATO

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002381  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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

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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 July 2011, the Greenville County Grand Jury indicted Joseph Urato on two counts of bank robbery and conspiracy. On January 17, 2012, Urato appeared before the Honorable Edward Miller and entered a guilty plea to the charges as indicted. Urato was represented by Randall Chambers, and the state was represented by Jon Gregory. App. 1 – 3. Judge Miller sentenced Urato to thirty years on the first bank robbery suspended to the service of eighteen years and three years probation. The sentence for the second bank robbery was thirty years suspended on probation concurrent with the first robbery. The sentence for the conspiracy was five years concurrent. App. 16, ll. 11 – App. 17, ll. 9. Urato did not appeal his convictions or sentences.

On May 31, 2012, Urato filed an application for post-conviction relief (PCR). The state filed a return on August 31, 2012. An evidentiary hearing was held on August 28, 2013 before the Honorable Robin B. Stilwell. Urato was represented by Susannah Ross, and the state was represented by Karen C. Ratigan. App. 33. On October 8, 2013, Judge Stilwell issued an order denying Urato's PCR application, and dismissing it with prejudice. App. 61 – App. 68. Urato'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.

Urato and a co-defendant, Deborah Bassler, were charged with the robbery of the Arthur Bank in Greenville on July 27, 2010, and with the robbery of the First Savers Bank in Greenville on July 30, 2010. The co-defendant Bassler entered the Arthur Bank first to make sure it was clear. Then she left, and Urato entered wearing a mask and bandanna and demanded money. He collected \$3400 from the teller. App. 7, ll. 11 – 22.

On July 30, 2010, Co-defendant Bassler entered the First Savers' Bank. However, one of the tellers recognized her as being involved in the Arthur Bank robbery, and tripped the alarm. The police arrived and caught the co-defendant and Urato at their vehicle preparing to rob the First Savers' Bank. The co-defendant gave a statement implicating herself and Urato. She was prepared to testify at trial. App. 7, ll. 23 – 12.

The original indictment had the second bank listed as Wachovia, but the state told the court that the indictment was amended to show that the bank was the First Savers Bank instead. Defense counsel told the judge that he had been shown a copy of the amended indictment. Urato agreed with the amendment. App. 8, ll. 13 – App. 12, ll. 3. Urato admitted he was guilty. App. 6, ll. 25 – App. 7, ll. 4.

At his PCR, Urato testified that his plea counsel provided ineffective assistance of counsel because Urato went to court dressed for trial and wanted a trial. He only pled guilty because his attorney came to him and said the state had offered him ten years non-violent if he pled guilty then. Urato signed the plea forms thinking he was getting ten years. He would have gone to trial but for the ten year plea offer. App. 37, ll. 14 – App. 38, ll. 16.

Urato filed an appeal but it was with the Clerk of Court in Greenville County instead of the Court of Appeals. When he wrote the Court of Appeals, he learned he did not have an appeal. App. 38, ll. 17 – App. 39, ll. 25.

Urato also did not know that he would have to serve 85% instead of 65% which he thought was the non-violent time. App. 42, ll. 6 – 22.

Plea counsel testified that he never told Urato that the state was offering ten years non-violent. He did tell Urato that he thought he would be convicted if he went to trial based on the evidence and the testimony of the co-defendant. Counsel admitted telling Urato that he would try to get ten years for him. Urato pled guilty based on counsel's advice. App. 44, ll. 11 – 24; App. 47, ll. 10 – App. 48, ll. 10; App. 46, ll. 13 – 23.

Counsel said that Urato wanted the FBI to take his case. Counsel talked with the FBI agent in Charleston who indicated he wanted to take the cases. The solicitor was willing if the FBI came and took control of the cases. However, the solicitor said he was proceeding. App. 45, ll. 12 – App. 46, ll. 12.

The PCR judge ruled that he found plea counsel's testimony to be credible but found Urato's testimony to not be credible. App. 64. Urato failed to meet his burden of proof that plea counsel provided ineffective assistance of counsel. App. 64. The judge also ruled that Urato did not prove that plea counsel told him he would received a ten year sentence if he pled guilty. App. 64-App. 65. The order provided that plea counsel was not deficient in his representation, and Urato was not prejudiced by counsel's performance. App. 67.

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).

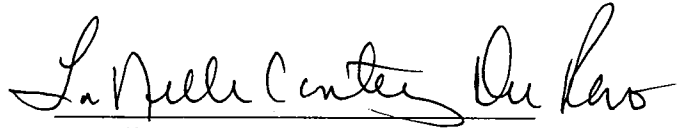
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (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 Urato before the plea that there was no plea offer. Counsel was ineffective for recommending to Urato that he plead guilty when Urato wanted to go to trial.

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 that reads "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above a horizontal line.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of June, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

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JOSEPH DOMINICK URATO

PETITIONER,

V.

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RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

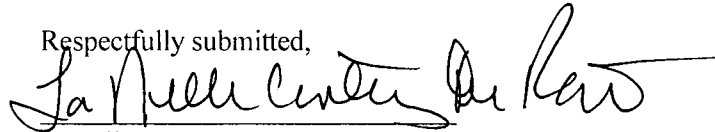
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Counsel for Joseph Dominick Urato states:

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 28, 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 Joseph Dominick Urato.

Respectfully submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of June, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
Robin B. Stilwell, Circuit Court Judge

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JOSEPH DOMINICK URATO

PETITIONER,

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RESPONDENT

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CERTIFICATE OF SERVICE

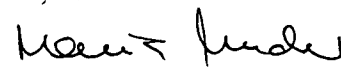
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Mr. Joseph Dominick Urato, #349299, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 19th day of June, 2014.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day  
of June, 2014.

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