

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

SEP 17 2014

S.C. Supreme Court

CULLEN BLAKE CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000635  
\_\_\_\_\_

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 .....4  
CONCLUSION .....8  
PETITION TO BE RELIEVED AS COUNSEL.....9

## ISSUE PRESENTED

Did the PCR court err in failing to find that a conflict of interest existed when Petitioner Campbell's plea counsel represented both petitioner and one of his co-defendants, Zakarias Arostegui, at their guilty pleas and the co-defendant received a sentence of ten years on a non-violent charge while Petitioner received a total of twenty years?

## STATEMENT

In November 2010, the Spartanburg County Grand Jury indicted Cullen Campbell on three counts of armed robbery (AR), and three counts of possession of a weapon during the commission of a violent crime. On August 23, 2011, Campbell appeared before the Honorable J. Mark Hayes and entered a guilty plea to the three counts of AR, and two counts of possession of a weapon during a crime of violence as indicted. One weapons charge was dismissed. Campbell also waived presentment to the grand jury on the charge of malicious injury to a courthouse jail. App. 8, ll. 23 – App. 9, ll. 18. Campbell was represented by James A. Cheek, and the state was represented by Abel Orlando Gray. App. 1. Judge Hayes sentenced Campbell to fifteen years on each AR with all to run concurrent, and five years on each of the weapons' charge to run concurrent to each other but consecutive to the AR sentences, and three years on the malicious injury charge to run concurrent to the others. App. 24, ll. 8 – 25. Campbell did not appeal his convictions or sentences.

On March 30, 2012, Campbell filed an application for post-conviction relief (PCR). He subsequently filed two amendments to his PCR application on June 4, 2013 and June 21, 2013. The state filed a return on April 17, 2013. An evidentiary hearing was held on October 1, 2013 before the Honorable J. Derham Cole. Campbell was represented by Ransome A. Coleman and W. Reid Wildman. The state was represented by Suzanne H. White. On March 25, 2014, Judge Cole filed an order denying Campbell's PCR application and dismissing it with prejudice. App. 78 – App. 86. Campbell's attorney filed a notice of appeal. This petition follows.<sup>1</sup>

---

<sup>1</sup> This petition is being submitted as a Johnson petition only because the PCR judge did not rule on the conflict issue although it was stated in the Order as a concern. There is nothing in the record to show that PCR counsel filed a Rule 59(e), SCRPC, motion to address the conflict issue. This could be a reasonable basis for a successful habeas ruling pursuant to Martinez v. Ryan, 132 S.Ct. 1309 (2012).

## ARGUMENT

The PCR court erred in failing to find that a conflict of interest existed when Petitioner Campbell's plea counsel represented both petitioner and one of his co-defendants, Zakarias Arostegui, at their guilty pleas and the co-defendant received a sentence of ten years on a non-violent charge while Petitioner received a total of twenty years.

On September 24, 2010, Campbell and two co-defendants walked up on a group of people playing cards outside their trailer. Campbell and his co-defendants robbed the people of, money cell phones, etc. One of the defendants pointed a black handgun at the people. App. 11, ll. 13 - 25

That same night, Campbell walked to a nearby location where a man was washing his truck. Campbell pointed a gun at the man and took his truck with the man's wallet inside. App. 12, ll. 1 – 19.

The third charge of malicious injury to the jail occurred after his arrest when he damaged the sprinkler heads and flooded his cell. App. 12, ll. 20 – App. 13, ll. 5.

During his guilty plea, Campbell told the court when asked if he still wanted to enter a plea, that he was there but he was not guilty of being the gunman. He said that the victims did not identify him as the gunman. App. 15, ll. 20 – App. 16, ll. 2

At the beginning of the plea, Campbell's plea attorney told the court that there was some question as to who was pointing the gun in the first armed robbery. He said that Campbell denied being the gunman but he was pleading under the hand of all is the hand of one theory. App.13, ll. 6 – 20. During the mitigation, plea counsel said he was very familiar with one of the other defendants, Zakarias Arostegui, and his family. App. 18, ll. 8 – App. 19, ll. 16.

At his PCR hearing, Campbell testified that he never said he was the gunman. Adrian Gray was the gunman. App. 49, ll. 1 – App. 50, ll. 3. His two co-defendants were charged with armed robbery also. But they received a ten year sentence non-violent. App. 50, ll. 12 – App. 51, ll. 9. Campbell learned later that his attorney also represented one of his co-defendants, Arostegui. His plea counsel never told Campbell that he was representing his co-defendant. His attorney did not have Campbell sign a waiver of conflict either. App. 55, ll. 5 – App. 56, ll. 15.

Plea counsel testified at the PCR hearing that Campbell did not want to plead guilty at first. However, Campbell's prints were found on the truck in the second AR. App. 65, ll. 12 – App. 66, ll. 21; App. 67, ll. 1 – App. 68, ll. 23. Counsel admitted that he represented one of Campbell's co-defendants, Zakarias Arostequi, at his guilty plea which occurred after Campbell's plea. He did not tell Campbell that he was representing Arostequi, nor did he have Campbell sign a waiver of a potential conflict. Plea counsel did not see a conflict of interest. App. 71, ll. 7 – App. 75, ll. 25.

The PCR judge listed the conflict of interest as one of Campbell's claims of ineffective assistance of counsel, but the judge did not rule on the conflict issue. The judge found that Campbell did not prove that plea counsel was ineffective, but found that plea counsel was thoroughly competent. The judge found that Campbell did not prove that he suffered any prejudice. App. 81; App. 78-App. 86.

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).

According to the Rules of Conduct a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation will be directly adverse to another client unless each client gives informed consent, confirmed in writing. Rules of Professional Conduct, Rule 1.7(a)(1) and (b)(4), RPC, Rule 407, SCACR. The test for a conflict of interest is "when an attorney places himself in a situation conducive to divided loyalties...If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists." State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005) citing Duncan v. State, 281 S.C. 438, 315 S.E. 2d 811 (1984).

In prosecution against defendant and her spouse for trafficking in cocaine, an actual conflict of interest in violation of defendant's right to effective assistance of counsel arose when the solicitor offered defendant and her spouse, who were represented by the same attorney, a plea bargain that would allow the charge against one spouse to be dismissed if the other spouse would plead guilty to the entire amount of the cocaine. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). The conflict arose because it was in each spouse's best interest for the other spouse to take the entire responsibility for the cocaine. Id. Further, counsel acted upon this conflicting loyalty by failing to

advise petitioner she had nothing to lose by proceeding to trial. Id. Citing Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). If defense attorney had actual conflict of interest, defendant was not required to demonstrate prejudice before trial court would grant motion to be relieved. State v. Gregory; 364 S.C. 150, 612 S.E.2d 449 (2005).

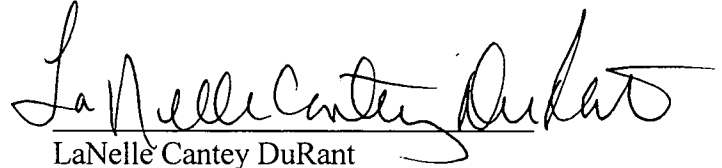
In Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008), the Supreme Court reversed and remanded the case of Freddie Lomax because plea counsel's simultaneous representation of both Lomax and her husband during guilty pleas which arose out of related offenses constituted a conflict of interest. Lomax and her husband were both found with drugs in their vehicles while both were away from their home in separate cars. Lomax was also arrested for selling crack to an undercover officer on several occasions. Crack cocaine and other drugs were found in the mutual home of Lomax and her husband. Lomax pled guilty to distribution of crack cocaine, distribution of crack within the proximity of a school, trafficking in crack cocaine, trafficking in cocaine, PWID crack within the proximity of a school, PWID marijuana and PWID marijuana within the proximity of a school. She received a congregate sentence of twenty-five years. Her husband pled guilty of PWID marijuana within the proximity of a school and received a three year sentence. The Supreme Court found that because this was an actual conflict of interest, Lomax did not need to show prejudice.

Campbell was in a similar situation. Plea counsel claims that he did not have a conflict of interest because they did not plead guilty at the same time was in error. The negotiations occur before the actual plea. Counsel should not have represented both clients because the issue was who pointed the gun during the AR of the four card playing people.

CONCLUSION

Based on the above, certiorari should be granted, and the order of the PCR court should be 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 17<sup>th</sup> day of September, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge

---

CULLEN BLAKE CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

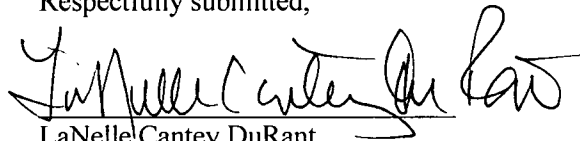
---

Counsel for Cullen Campbell 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 October 1, 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 Cullen Campbell.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 17<sup>th</sup> day of September, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

\_\_\_\_\_

CULLEN BLAKE CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

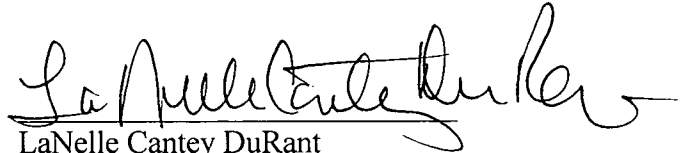
RESPONDENT

\_\_\_\_\_

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 Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Cullen Campbell, #332961, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 17<sup>th</sup> day of September, 2014.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17<sup>th</sup> day  
of September, 2014.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.