

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY  
J. MARK HAYES, II, CIRCUIT COURT JUDGE

NATHANIEL GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER.

*Withdrawn  
by order of  
Court dated  
7-21-11*

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ISSUE PRESENTED

Did the PCR court err by failing to find trial counsel ineffective for not investigating the chain of custody Form C which had the wrong person named as the person who made the original seizure and for not objecting to the admission of the drugs due to the inaccurate chain of custody Form C?

## STATEMENT

In November 2004, the Spartanburg County Grand Jury indicted Nathaniel Green on the charge of trafficking in crack cocaine more than ten grams. On February 15, 2005, Green appeared before the Honorable J. Derham Cole for a bench trial which Green requested. App. 7, ll. 1 – 12. He was represented by Thomas A.M. Boggs, Esquire. Judge Cole found Green guilty as charged and sentenced him to the mandatory minimum of twenty-five years for the third offense. A notice of appeal was filed. An appeal was perfected with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal by order filed June 11, 2007.

On June 23, 2008, Green filed an application for post-conviction relief (PCR). The state filed a return on February 14, 2009. An evidentiary hearing was held July 27, 2009 before the Honorable J. Mark Hayes, II. On November 2, 2009, Judge Hayes issued an order denying Green's PCR application and dismissing it with prejudice. Green's attorney filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred by failing to find trial counsel ineffective for not investigating the chain of custody Form C which had the wrong person named as the person who made the original seizure and for not objecting to the admission of the drugs due to the inaccurate chain of custody Form C.

Nathaniel Green was arrested on June 30, 2004 when he allegedly sold an ounce of crack cocaine to Keith Pearson for \$800. App. 7, ll. 13 - 25. Keith Pearson was a confidential informant (CI) who made controlled buys for the Sheriff's Department. App. 9, ll. 1 - 25; App. 10, ll. 1 - 25. On June 30, 2004, Pearson was equipped with a video device and audio device in preparation for a controlled buy from Green whom Pearson knew. The deputies gave him \$800 to purchase one ounce of crack from Green. App. 11, ll. 1 - 25.

The deputies heard and saw the drug transaction through the equipment. App. 13, ll. 1 - 25; App. 14, ll. 1 - 25; App. 15, ll. 1 - 24.

At his PCR hearing, Green's testimony was that his trial counsel was ineffective because he did not object to the chain of custody Form C and did not investigate that issue. App. 80, ll. 1 - 25. Green explained that the wrong person was named as the person, who made the original seizure, on the Form C used for the drugs on which he was convicted. Keith Pearson should have been listed as the person who made the original seizure but the Form C had Chris Raymond listed. This Form C was Applicant's Exhibit 3 at the PCR hearing. App. 92, ll. 1 - 25; App. 93, ll. 1 - 25; App. 94, ll. 1 - 25; App. 95, ll. 1 - 24.

Green also raised the issue that the Forms C used by the state were all signed and notarized as blank forms and given to the officers to use and fill in as needed. This was in violation of Rule

6(b) of the South Carolina Rules of Criminal Procedure which required that each form be signed personally each time it was used, and notarized each time. App. 85, ll. 10 – 25; App. 92, ll. 1 – 25.

Trial counsel testified at the PCR hearing that this was the first time he had heard of this issue with the chain of custody forms. He said that was the one issue that “caught his attention that day”. He admitted that he would have had those documents before trial but he was not aware of the problems. App. 113, ll. 1 – 19; App. 115, ll. 15 – 25; App. 116, ll. 1 – 9.

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); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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).

A criminal defense attorney has a duty to perform a reasonable investigation, including at a minimum, the duty to interview potential witnesses and to make an independent investigation of the

facts and circumstances of the case. Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008); Ard v. Catoe, 372 S.C. 318, 642 S. E.2d 590 (2007).

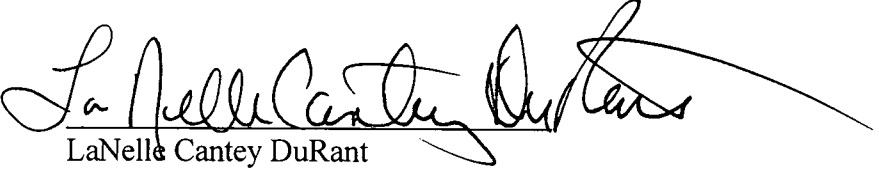
Failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991).

Green's trial counsel was ineffective for not investigating the chain of custody forms. If he had, he would have been aware that the wrong person was named, and he would have been able to discover if the forms were notarized before they were completed.

CONCLUSION

Based on the above, certiorari should be granted, and the order of the PCR court reversed, and the case remanded for a new trial.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of July, 2010.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SPARTANBURG COUNTY  
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PETITION TO BE RELIEVED AS COUNSEL

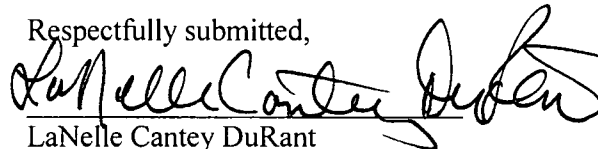
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Counsel for Nathaniel Green states:

1. She is 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 July 27, 2009. 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 Nathaniel Green.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of July, 2010

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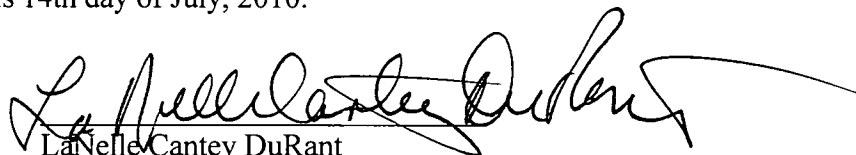
RESPONDENT

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CERTIFICATE OF SERVICE

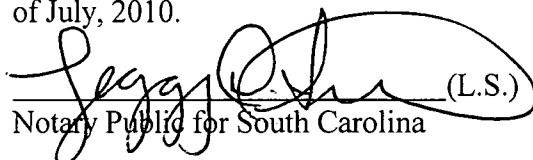
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, and Nathaniel Green, #307622, Perry Correctional Institution, this 14th day of July, 2010.



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day  
of July, 2010.



(L.S.)  
Notary Public for South Carolina

My Commission Expires: December 4, 2017.