

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

DEC 1 2014

S.C. Supreme Court

Certiorari to Aiken County

Edgar W. Dickson, Circuit Court Judge

DARRELL L. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000805

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 PRESENTED2
STATEMENT3
ARGUMENT5
CONCLUSION8
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 November 2008, the Aiken County Grand Jury indicted Darrell L. Williams on the charge of kidnapping. On April 27, 2009, Petitioner Williams appeared before the Honorable Doyet A. Early, III, and entered a guilty plea as indicted. App. 55, ll. 6 – App. 59, ll. 9. Williams was represented by Brian A. Katonak, and the state was represented by John W. Weeks. App. 1. Seven co-defendants entered guilty pleas at the same time which arose from the same incident.¹ App. 1-App. 3; App. 28, ll. 24 – App. 41, ll. 13. Judge Early sentenced Williams to thirty years imprisonment. The state nol prossed a murder charge against Williams which was a direct presentment. App. 58, ll. 11 - App.59, ll. 9. Williams filed a Motion to Reconsider the Sentence which was heard on June 16, 2009 by Judge Early. App. 143. On October 6, 2009, Judge Early issued an order denying the motion to reconsider the sentence. App. 174. Williams' attorney filed a notice of appeal which was perfected by the Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal. State v. Williams, Op. No. 2012-UP-297 (Ct. App. filed May 16, 2012). App. 239-App. 240.

¹ The plea proceeding in question included pleas from the following co-defendants: Frankie L. Gantt (pled guilty to murder and received a sentence of forty five years); Marion F. Abner (pled guilty to kidnapping and received a sentence of seventeen years); John Oakman, Jr. (pled guilty to kidnapping and received a sentence of seventeen years); Sheldon Oakman (pled guilty to kidnapping and received a sentence of thirty years); Ronnie Bowers, Jr. (pled guilty to kidnapping and received a sentence of seventeen years); Johnnie W. Walker (pled guilty to kidnapping and received a sentence of thirty years); Andre Norris (pled guilty to kidnapping and received a sentence of seventeen years).

On May 21, 2012, Williams filed an application for post-conviction relief (PCR). The state filed a return on August 9, 2012. An evidentiary hearing was held on January 22, 2014 before the Honorable Edgar W. Dickson. Williams was represented by Kurt Allen Worthington, and the state was represented by Daniel F. Gourley, II. App. 189. On April 9, 2014, Judge Dickson issued an order denying Williams' PCR application, and dismissing it with prejudice. App. 239- App. 247. Williams' attorney filed a notice of appeal on April 17, 2014. App. 249- App. 250. On May 5, 2014, Williams filed a *pro se* motion to alter or amend the judgment of the court's order of dismissal.² App. 252 – App. 258. This petition follows.

² Because the Motion to Alter the Judgment of the Order of Dismissal was filed after the Notice of Appeal was filed, the circuit court no longer retained jurisdiction. Rule 203(b)(1), SCACR; Rule 205, SCACR.

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.

Williams and the victim of the kidnapping and murder, Jeremy Leaphart, were friends. App. 55, ll. 6 – App. 56, ll. 24. According to the state's case, Jeremy Leaphart was apparently sought after by Williams and codefendants regarding the location of numerous missing guns. Jeremy Leaphart and Williams were believed to have been involved together in the theft of some guns which were missing. On December 24, 2007, Leaphart was seen entering a vehicle which contained Petitioner Williams, Johnny Walker, and Sheldon Oakman. Then, Leaphart was taken to a particular trailer where he was severely beaten. Later, Leaphart was placed in a vehicle containing John Oakman, Frankie Gantt, Marion Abner, and Andre Norris. A second vehicle containing Sheldon Oakman and Ronnie Bowers followed. Williams and Walker remained behind at the trailer and did not follow. Ultimately, Leaphart was taken to Hutto Pond Road in Aiken County where he was shot by Frankie Gantt who was Williams half-brother. Leaphart's body was recovered from a dump outside the town of Batesburg. App. 29, ll. 14 – App. 37, ll. 8.

Williams and the seven other co-defendants pled guilty to kidnapping. Only Frankie Gantt pled guilty to the murder. App. 4, ll. 1 – App. 19, ll. 6.

At his PCR hearing, Williams testified that his plea counsel was ineffective because his attorney told him he would receive a sentence somewhere in the range of fifteen years. App. 210, ll. 1 – 25; App. 213, ll. 1 – 22. Williams only pled guilty to the kidnapping because his attorney told him that if he did not take this plea, he would be charged with murder and the kidnapping and maybe other charges. If he had known that he was getting a thirty year sentence, he would not have pled guilty but would have gone to trial. App. 214, ll. 1 – 25.

His plea counsel testified at the PCR hearing that he could not remember what he told Williams about the sentence he might receive. He told Williams when they discussed the plea that the state was not going to offer any fixed amount of time for the sentence. The state made no recommendations as to sentencing. App. 193, ll. 1 – App. 194, ll. 24; App. 196, ll. 21 – App. 199, ll. 17. Plea counsel did not recall if he told Williams that he would get around fifteen years. He typically gave clients the sentence range, but he did not recall if he did or not with Williams. App. 199, ll. 3 – App. 200, ll. 24.

The PCR judge found that plea counsel's testimony was very credible while Williams' testimony was less credible. App. 242- App. 243. The PCR judge ruled that Williams failed to meet his burden of proof that his guilty plea was involuntarily made. The judge's order read that Williams had a full understanding of the consequences of his guilty plea, and that his plea was made freely, voluntarily, and intelligently. App. 245 – App. 246. The judge denied his PCR application. App. 246.

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, *supra*; Butler v. State, *supra*.

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. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); 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).

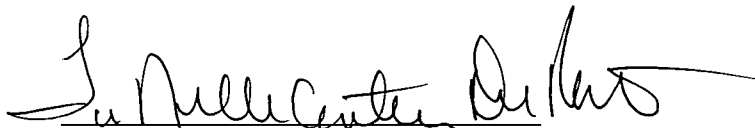
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (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).

The PCR judge erred in not finding trial counsel ineffective for not keeping Williams informed of the possibility that he would receive a thirty year sentence. Counsel was ineffective for not insuring that Williams wanted to plead guilty and that he understood all of the consequences of pleading guilty.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of December, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO AIKEN COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

DARRELL L. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

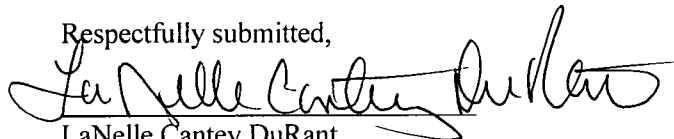
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darrell L. Williams 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 January 22, 2014. 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 Darrell L. Williams.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 1st day of December, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
Edgar W. Dickson, Circuit Court Judge

DARRELL L. WILLIAMS,

PETITIONER,

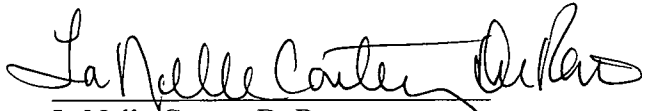
V.

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 Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Darrell L. Williams #334447, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 1st day of December, 2014.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of December, 2014.

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