

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

ALVIN S. SAMUELS, II,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000739

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring that Petitioner Samuels' guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate Petitioner's case?

STATEMENT

In April 2011, the Richland County Grand Jury indicted Alvin Samuels II, on the charges of armed robbery (AR) two counts; attempted murder; possession of a weapon during the commission of a violent crime. In June 2012, the Grand Jury indicted Samuels on the charges of assault and battery first degree; kidnapping; and pointing and presenting a firearm. On July 12, 2012, Samuels appeared before the Honorable Deandrea G. Benjamin and entered a guilty plea to all of the charges as indicted. Samuels was represented by James Shadd, III, and the state was represented by Richard C.R. Cathcart. App. 1. The state presented a negotiated plea offer of a cap of twenty-five years. App. 3, ll. 1 – 23. Judge Benjamin sentenced Samuels to a total of eighteen years as follows: eighteen years on each of the armed robberies, the kidnapping, and attempted murder. On the pointing and presenting and possession of a weapon during a crime of violence, the sentence was five years each. The sentence on the assault and battery first degree was ten years. All of the sentences were to run concurrent to each other. App. 42, ll. 12 – App. 43, ll. 5. Samuels did not file an appeal.

On March 14, 2013, Samuels filed an application for post-conviction relief (PCR). The state filed a return on June 21, 2013. An evidentiary hearing was held on October 2, 2013 before the Honorable James R. Barber, III. Samuels was represented by Anna R. Good. The state was represented by Megan E. Harrigan. App. 79. Judge Barber heard testimony from Samuels, and continued the hearing in order to allow Samuels to call witnesses. App. 141, ll. 19 – App. 142, ll. 4. The second hearing was held January 22, 2014 before Judge Barber. After an examination by Judge Barber, the judge allowed Samuels to represent himself at the second hearing with PCR counsel, Anna Good, serving as standby counsel to assist. App. 165, ll. 17 – App. 187, ll. 24. On March 4, 2014, Judge Barber filed an order denying Samuels' PCR application and dismissing it with

prejudice. App. 301 – App. 315. On March 21, 2014, Samuels filed a motion for rehearing pursuant to Rule 59(e) and alter or amend pursuant to Rule 59 (e). App. 317 – App. 351. On April 7, 2014, Judge Barber filed an order denying Samuels’ motion pursuant to Rule 59 (e). App.352 – App. 354. Samuels 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 Samuels' guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate Petitioner's case.

Alvin Samuels had a troubled history growing up. Nevertheless, he was on the right path to being successful. He was in ROTC in school and completed certification with the Red Cross to be a lifeguard. However, he dropped out of high school but returned and attended the Adult Education program, where he made excellent grades, and obtained his diploma. He received an academic scholarship to attend Allen University. He completed alcohol and drug treatment as a teenager. He had plans to join the Navy and become a Navy Seal. He became involved with his girlfriend, Tyreshia Hopkins, with whom he had a child. He considered her two children as his own. App. 27, ll. 12 – App. 39, ll. 21.

William Felder had known Samuels since Samuels was a child. Felder believed Samuels was a good man. Samuels had worked for Felder but he recognized when Samuels turned a curve. One of Samuels' friends was shot and paralyzed. Samuels started carrying a gun then. App. 228, ll. 1 – App. 233, ll. 4.

On July 22, 2010, Samuels entered the Hip Hop Wear carrying two handguns. Daniel Kual was working at the time, and Carletta Williams and Nathaniel Irving were hanging out there. Samuels started an armed robbery of the two men, and pistol whipped Carletta Williams when she tried to leave. The owner of the shop, Mr. Ogoubi, walked in and Samuels told him to leave as this had nothing to do with him. Kual ran and locked himself in the bathroom. Samuels shot through the bath room door hitting Kual in the face. The others ran then and so did Samuels. He turned himself

in about a month later on August 27. The store was only half a block from Samuels' home, and the people in the store had known Samuels for years. App. 8 ll. 18 – App. 10, ll. 23.

Defense counsel explained to the court during mitigation that Samuels had worked at the Hip Hop and assisted in some way. Samuels felt they owed him for the work he had been doing. The robbery was an impulsive act due to a lapse in judgment and lapse in alcohol use as he was intoxicated. App. 30, ll. 8 – App. 33, ll. 8.

Mr. Ogoubi, the owner of the Hip Hop, had told the investigator from the public defender's office who had the case initially that Samuels should get boot camp to rehabilitate him. He did not need incarceration but needed help as he was young. App. 29, ll. 10 – App. 30, ll. 17.

The state made a plea offer of a negotiated sentence with a cap of twenty-five years. App. 3, ll. 1 – 21. The plea judge sentenced Samuels to eighteen years total. App. 42, ll. 12 – App. 43, ll. 5.

At his first PCR hearing, Samuels testified that his plea counsel was ineffective for not conducting a reasonable investigation. App. 82, ll. 1 – 11. He did not want to plead guilty, and told his attorney he wanted a trial. He told his attorney that he wanted a thorough investigation into the facts and circumstances of the case. Instead, his attorney relied on the investigation done by someone else from the public defender's office. App. 87, ll. 2 – App. 90, ll. 9.

Samuels filed a motion to have his attorney relieved because he was trying to make Samuels plead guilty. Samuels did withdraw that motion because he and attorney made an oral agreement that his attorney would conduct a thorough investigation and stop advising Samuels to plead guilty. However, his attorney still did not perform the investigation, and told Samuels that a trial would be fruitless. App. 92, ll. 10 – App. 98, ll. 23. His plea was involuntary because he pled guilty based on advice from his attorney which was "negligent and incompetent." Samuels was asking the PCR

court to find his attorney ineffective for giving Samuels the wrong information about his plea and for not doing a thorough investigation. App. 110, ll. 21 – App. 111, ll. 25.

Samuels told the PCR court that he needed to prove his allegations and he had witnesses he had wanted to call. After much back and forth discussion, the PCR judge agreed to continue the hearing in order for Samuels to bring his witnesses. App. 118, ll. 1 – App. 122, ll. 24; App. 125, ll. 1 – App. 143, ll. 25.

The second PCR hearing was held January 22, 2014. Samuels' PCR attorney told the court that Samuels did not want her to represent him and he was prepared to represent himself. App. 165, ll. 13 – ll. 23. After a thorough examination by the court, the PCR judge agreed for Samuels to represent himself with PCR counsel as standby counsel to assist. App. 166, ll. 1 – App. 187, ll. 24.

Samuels had four witnesses: Kouassi Ogoubi; Stanley Samuel; Tyreshia Hopkins; and William Felder. App. 162.

Mr. Ogoubi testified that he was not a victim as he came in while the robbery was occurring so he was just a witness. App. 189, ll. 1 App. 190, ll. 22. He said a private investigator came and talked to him. He told the investigator that he had known Samuels since Samuels was a kid. He thought Samuels should get only about two years in a boot camp. Samuels' attorney never contacted him because he would have come to the plea hearing and testified for Samuels. App. 196, ll. 17 – App. 200, ll. 11.

The second witness was Stanley Samuels, the father of Petitioner Samuels. He talked with Samuels' attorney and told him that Samuels wanted a complete investigation. The attorney did not do an investigation. The attorney told Mr. Samuels that Alvin Samuels was probably looking at a sentence of ten years. App. 213, ll. 25 – App. 220, ll. 16.

Tyreshia Hopkins testified that she was the girlfriend of Petitioner Samuels. She hired plea counsel to represent Samuels. She spoke with Samuels' attorney several times. They discussed the attorney doing an investigation. However, the attorney never did one as far as she knew. App. 221, ll. 25- App. 223, ll. 22.

William Felder was the fourth witness for Samuels. He would have come to the plea hearing as a character witness for Samuels if the attorney had contacted him. He had known Samuels all of his life. Samuels worked for him as a laborer in his brick mason company. Samuels was a good person and needed rehabilitation rather than being with a "bunch of criminals." Samuels started down the wrong path after a friend was shot and paralyzed. Felder was not contacted by Samuels' attorney. If he had, Felder would have come to the plea hearing to verify his good character. App. 227, ll. 22 – App. 233, ll. 5.

Plea counsel testified at the PCR hearing that there was no doubt of Samuels' guilt, and he would likely be convicted at a trial. App. 234, ll. 4 – App. 238, ll. 1. On cross-examination he admitted that he did not talk to any witnesses nor victims. He did not conduct any investigation of them. App. 266, ll. 23 – App. 267, ll. 25; App. 273, ll. 16 – App. 274, ll. 21. He relied on the investigation notes of the investigator, Detective Watkins, who was hired by the public defenders' office because they had the case originally before plea counsel was retained. Investigator Watkins had talked with the witnesses who were consistent with the statements they had given law enforcement. Plea counsel had those statements provided by the state. App. 267, ll. 1 – 18.

Later as cross-examination continued, plea counsel was asked what kind of investigation he did. Counsel replied that he talked with Alvin Samuels several times, and he met with Samuels' father. Counsel asked Samuels' father to find the witnesses and talk to them about their stories.

However, the father's efforts were fruitless. App. 276, ll. 7 – 17. Counsel relied on the private investigator's notes for the investigation. App. 280, ll. 19 – App. 281, ll. 9.

The PCR judge ruled that he found plea counsel's testimony to be very credible while Samuels' testimony lacked credibility. App. 312. The judge held that Samuels failed to meet his burden that he suffered any prejudice from counsel's relying on the private investigator's report. Plea counsel also knew that Samuels' father was actively trying to find witnesses and take statements. Counsel had therefore testified that he saw no benefit from hiring another investigator as Samuels readily admitted his guilt. App. 313. The PCR judge denied Samuels' PCR application. App. 315.

A criminal defendant is entitled to effective representation at trial and on direct appeal. Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052(1984). In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) the deficient performance must have prejudiced the applicant's case. Id., Gallman v. State, 307 S.C. 273, 414 S.E.2d 780 (1992).

Failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). Counsel representing a criminal defendant has a duty to conduct a reasonable investigation, which encompasses the defendant's right to interview potential witnesses against him. State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000).

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).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of the claim of ineffective assistance of counsel, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.

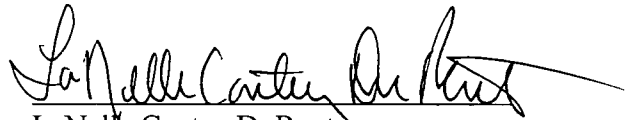
In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court reversed the PCR court and remanded Lounds' case because his defense counsel was ineffective for failing to adequately prepare for trial so as to be able to call key witnesses. Counsel failed to make an independent investigation of the facts and circumstances.

The PCR judge erred in not finding plea counsel ineffective for not insuring that Samuels wanted to plead guilty and was satisfied that he knew all of the evidence against him. Counsel did not conduct an independent investigation but relied on the investigation of another person. If counsel had conducted his own investigation, there was a reasonable probability that he may have seen something that another investigator missed. He should have at least talked to the witnesses.

CONCLUSION

Based on the above, certiorari should be granted, and petitioner's sentences and convictions should be reversed, and his case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "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 9th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

ALVIN S. SAMUELS, II,

PETITIONER,

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RESPONDENT

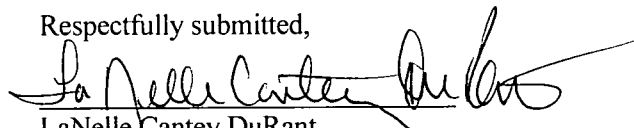
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alvin S. Samuels, II 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 10-2-13 & 1-22-14. 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 Alvin S. Samuels, II.

Respectfully submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of March, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

James R. Barber, III, Circuit Court Judge

ALVIN S. SAMUELS, II,

PETITIONER,

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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 Megan Harrigan, Esquire and Alvin S. Samuels, II, #351567, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of March, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of March, 2015.

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