

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Richland County

Clifton Newman, Circuit Court Judge

YASHAWNUS L. PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001906

JOHNSON PETITION FOR WRIT OF CERTIORARI

PURSUANT TO AUSTIN v. STATE

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 November 2008, the Richland County Grand jury indicted Yashawnus Patterson on the charges of strong arm robbery (SAR) and burglary first degree. In February 2009, the Richland County Grand Jury indicted Patterson on two counts of criminal sexual conduct (CSC) with a minor second degree. On November 2, 2010, Patterson appeared before the Honorable L. Casey Manning and entered a negotiated guilty plea to SAR and two counts of CSC with a minor second degree. As part of the negotiation, the burglary first degree was dismissed and the three sentences were to run concurrent. App. 3, ll. 1 – 25. Patterson was represented by James H. May, and the state was represented by Margaret Fent Bodman. App. 1. Judge Manning accepted the negotiated plea and sentenced Patterson to thirteen years on each charge with all to run concurrent. App. 23, ll. 15 – 20. No direct appeal was filed. App. 114.

On October 28, 2011, Patterson filed his first PCR application. The state filed a return on November 7, 2011. An evidentiary hearing was held on October 17, 2013 before the Honorable Clifton B. Newman. Patterson was represented by Cody Smith, and the state was represented by Rob A. Corney. App. 42. On December 4, 2012, Judge Newman issued an order denying Patterson's PCR application and dismissing it with prejudice. App. 73 – App. 81. An appeal was not filed. Patterson filed a *pro se* notice of appeal on January 25, 2013. This appeal was dismissed by the Supreme Court on February 25, 2013 as being filed untimely. App. 114.

On August 28, 2013, Patterson filed a second PCR application. The state filed a return and motion to dismiss all claims beyond the Austin review on December 12, 2013. Patterson filed an amended PCR application on June 24, 2014 clarifying his intention to seek relief pursuant to Austin v. State, supra, for his attorney's failure to file a notice of appeal timely. App. 89. An evidentiary hearing was held on September 3, 2014 before the Honorable Robert E. Hood. Patterson was

represented by Kristy Goldberg, and the state was represented by J. Walter Whitmire. App. 95. On September 8, 201, Judge Hood issued an order granting Patterson an appeal from the denial of his first PCR application captioned 2011-CP-40-07255. The PCR application was dismissed. Patterson's attorney filed a timely notice of appeal. This Johnson petition for a writ of certiorari pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) is filed simultaneously with a petition for a writ of certiorari.

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.

Yashawnus Patterson pled guilty to two different incidents. The first incident involved a strong arm robbery on September 13, 2008 which occurred at the Western Inn motel. Patterson knocked on the door of a room. When the victim opened the door, Patterson pushed his way in and took ten dollars from the victim. App. 19, ll. 18 – App. 20, ll. 10.

The CSC with a minor second degree charges occurred when Patterson went to the apartment of two sisters ages twelve and fifteen when their mother was at work. He had sex with both girls and his DNA was found in a vaginal swab of the twelve year old. The girls' mother came home and found him in bed with the twelve year old. App. 20, ll. 11 – App. 21, ll. 9.

At his first PCR hearing, Patterson testified that his plea attorney was ineffective because his guilty plea was involuntary and unintelligently entered because he had no knowledge of the crime. He did not know what he was doing. His attorney was ineffective because he did not represent Patterson to the best of his ability. Patterson did not have full awareness of the elements of the crimes he was charged with committing. His attorney had induced him to believe he would receive a sentence of four to six years. App. 48, ll. 9 – App. 50, ll. 24. If he had known he was getting a longer sentence, he would not have pled guilty but would have waited to go to trial. App. 50, ll. 12 – 25. He had a better chance of winning at trial because there was no DNA on one of the girls. The burglary first was nothing but sticking his arm through the door of the motel. App. 61, ll. 25 – App. 61, ll. 25.

Plea counsel testified that he never promised Patterson that he would receive a four to six year sentence. App. 69, ll. 6 – App. 70, ll. 2. Plea counsel believed that he gave Patterson all of the

information he needed to make a voluntary and informed decision. App. 68, ll. 14 – 25. The negotiated plea offer was a package deal including all of his charges. App. 67, ll. 23 – App. 68, ll. 25.

The PCR judge held that he found plea counsel's testimony to be very credible and Patterson's testimony to be not very credible. App. 79. The judge ruled that Patterson was well aware of the realistic consequences of pleading guilty. There was no "reasonable probability" that Patterson would not have pled guilty but gone to trial but for counsel's erroneous sentencing advice. Patterson failed to prove that his plea was involuntary due to plea counsel being ineffective. App. 79 – App. 80.

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).

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).

Plea counsel was ineffective for not insuring that Patterson understood the elements of the crimes with which he was charged as that was the only way his guilty plea could have been knowingly and voluntarily made.

CONCLUSION

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

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

YASHAWNUS L. PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

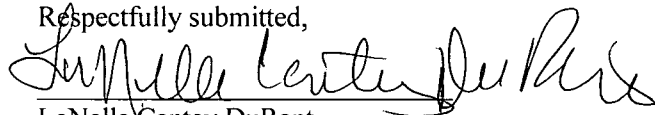
PETITION TO BE RELIEVED AS COUNSEL

Counsel for YaShawnus L. Patterson 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 17, 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 YaShawnus L. Patterson.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 24th day of March, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Clifton Newman, Circuit Court Judge

YASHAWNUS L. PATTERSON,

PETITIONER,

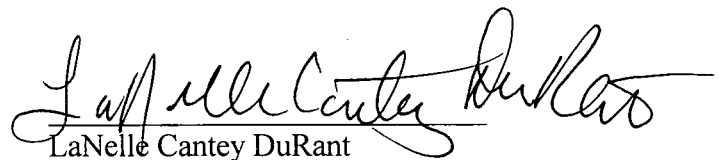
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE


I certify that a true copy of the Johnson petition for writ of certiorari pursuant to Austin v. State and a copy of the appendix in this case have been served on J. Clayton Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. YaShawnus L. Patterson, #249829, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936
this 24th day of March, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of March, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.