

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

**RECEIVED**

APR 14 2015

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Certiorari to Charleston County

**S.C. Supreme Court**

Deadra L. Jefferson, Circuit Court Judge  
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FERRIS G. SINGLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002314  
\_\_\_\_\_

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

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ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not moving for a mistrial when the victim testified that Petitioner said to her that it did not matter because he was going back to prison anyway which was prejudicial because it told the jury he had been incarcerated previously?

## STATEMENT

In January 2006, the Charleston County Grand Jury indicted Ferris Singley on the charges of armed robbery (AR), burglary first degree, and kidnapping. On May 1, 2006, Singley proceeded to trial before the Honorable R. Knox McMahon and a jury. Singley was represented by Kelly K. Solar and W. Ted Smith. The state was represented by D. Bruce DuRant. App. 1. The jury found Singley guilty of AR and burglary but not guilty of kidnapping. App. 276, ll. 12 – App. 277, ll. 16. Singley's attorney filed a notice of appeal. The appeal was perfected by the Office of Appellate Defense. The Court of Appeals affirmed Singley's convictions on May 6, 2009. State v. Singley, 383 S.C. 441, 679 S.E.2d 538 (Ct. App. 2009). After a petition for rehearing was denied, appellate counsel filed a petition for a writ of certiorari to the Court of Appeals. The South Carolina Supreme Court affirmed Singley's convictions and sentences in a published opinion on April 4, 2011. State v. Singley, 392 S.C. 270, 709 S.E.2d 603 (2011).

On June 10, 2011, Singley filed an application for post-conviction relief (PCR). The state filed a return on March 15, 2012. An evidentiary hearing was held on June 16, 2014 before the Honorable Deadra L. Jefferson. Singley was represented by Rodney D. Davis, and the state was represented by Ashleigh R. Wilson. App. 306. Judge Jefferson issued an order on September 30, 2014 denying Singley's PCR and dismissing it with prejudice. App. 371 – App. 404. Singley's attorney filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not moving for a mistrial when the victim testified that Petitioner said to her that it did not matter because he was going back to prison anyway which was prejudicial because it told the jury he had been incarcerated previously.

Ferris Singley was charged with entering the home of his mother, Brenda Singley, in the early morning hours of October 2, 2005. His mother was out, but when she returned home, Singley allegedly held a butcher knife to her throat and demanded her money. She gave him approximately two hundred dollars. He then bound her hands and left her on the bed face down. Singley was arrested about two hours later where he lived in a trailer owned by the family less than a block from his mother's home. He was charged with AR, burglary first degree, and kidnapping. App. 106, ll. 1 – App. 108, ll. 2.

A Jackson v. Denno, 378 U.S. 368 (1964) hearing was held pretrial because Singley had told the arresting officer that he had taken his mother's money. Officer Tina Kiker testified at the Denno hearing that the mother had told her that Singley said he had killed someone two days before. When the officer asked Singley about this, he admitted telling his mother that but it was not true. He only wanted to scare her. App. 13, ll. 15 – App.16, ll. 17.

At the close of the hearing, defense counsel asked for a ruling from the judge to exclude Singley's statement that he had killed someone. The judge said he would do a 403 analysis after hearing some of the mother's testimony. App. 26, ll. 22 – App. 27, ll. 16.

Ms. Singley testified *in camera* at the beginning of the trial. Defense counsel asked the judge for a ruling on Singley's statement that he had killed someone. The judge ruled that he would allow it after he did his 403 analysis. App. 95, ll. 15 – App. 96, ll. 3.

During the trial, Ms. Singley testified on direct about the incident. Her testimony was that when Singley put the knife to her throat, he said that if she screamed, he would kill her. Then he said: “It doesn’t matter because—he said—I’m going to prison anyway because –I just killed somebody yesterday.” Defense counsel objected. App. 115, ll. 16 – 25. Counsel’s reasons were the same as previously stated. The judge reaffirmed his rulings and told the state to continue. App. 116, ll. 1 – 15.

The solicitor then asked Ms. Singley what her son said to her during the incident. She responded that he said: “It doesn’t matter anyway because I’m going **back** to prison. ...because I just killed somebody.” There was no objection by defense counsel. App. 116, ll. 16 – 20.

The jury found Singley guilty of AR and burglary first degree but not guilty of kidnapping. App. 276, ll. 12 – App. 277, ll. 16.

At his PCR hearing, Singley testified that there was a reference during his mother’s testimony to the fact that he had been incarcerated previously. He believed that his trial counsel was ineffective in the way she handled that issue. He explained that his attorney objected when his mother told of Singley’s statement to her that he had killed someone the day before. The judge overruled the objection. Immediately following that, his mother stated that Singley said it did not matter because he was going **back** to prison anyway.[Emphasis added]. This had a tremendous impact on the trial because the jury then knew he had a record, and had been in prison before. His attorney did not object, did not ask for a curative instruction and did not move for a mistrial. The trial just went on. App. 309, ll. 1 – App. 316, ll. 2.

Trial counsel testified at the PCR hearing that she did not recall making an objection to the reference that he was going back to prison. The PCR judge interrupted immediately and said that trial counsel did object—a contemporaneous objection. The judge said she had that portion of the

record. Counsel admitted not asking for a mistrial. App. 336, ll. 9 – 24. Counsel testified that the primary evidence against Singley was his mother’s testimony. Her credibility was “key” at trial. App. 325, ll. 8 – 12.

The PCR judge ruled in her order that trial counsel’s testimony was credible while Petitioner Singley’s testimony was not credible. App. 382. In her order where the PCR testimony was summarized, the PCR judge wrote that Singley felt trial counsel should have moved for a mistrial when his mother testified that he told her he was going back to jail which told the jury he had a criminal record. App. 375-376; App. 116. When counsel’s PCR testimony was summarized, the order addressed only Singley’s statement that he had killed someone and that counsel objected to that. App. 379. The PCR judge wrote about this issue:

The applicant alleges counsel was ineffective for failing to object or move for a mistrial when the victim referred to the applicant being incarcerated at trial. This court finds this allegation is without merit and counsel adequately challenged the admission of this statement by the victim at trial.

App. 395, ll. E.

Then in discussing the reasoning for the ruling, the judge wrote:

The record reflects the victim testified at trial that the applicant put a knife to her throat and said: “I’m going to prison anyway because –I just killed someone yesterday.”

App. 396.

Then the judge wrote that counsel moved pretrial to exclude this statement and objected contemporaneously when the statement was admitted. App. 396.

The judge ruled that trial counsel was not deficient and Singley was not prejudiced by counsel’s representation. App. 404.

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).

Whether to grant or deny a mistrial motion is a matter within the trial court’s sound discretion, and the court’s decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); citing State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999). In order to receive a mistrial, a defendant must show error and resulting prejudice. *Id.*

The party moving for a mistrial has the burden to show not only error, but resulting prejudice. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). A mistrial should be granted only when absolutely necessary. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008).

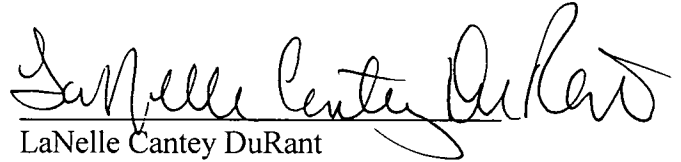
Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Singley was prejudiced by the victim's testimony that referenced the fact that he had been in prison previously. The jury then knew that he had a criminal record. This created sufficient prejudice for a mistrial. The PCR judge named this issue but then confused it with the statement that he had killed someone the day before. Counsel did object to the statement that he had killed someone, but did not object to the subsequent statement that he was going back to prison which was on App. 116 of the Appendix. Counsel did not object to that statement. Counsel should have asked for a mistrial at that point.

CONCLUSION

Based on the above, certiorari should be granted, and his 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 horizontal line underneath the name.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of April, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

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FERRIS G. SINGLEY,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

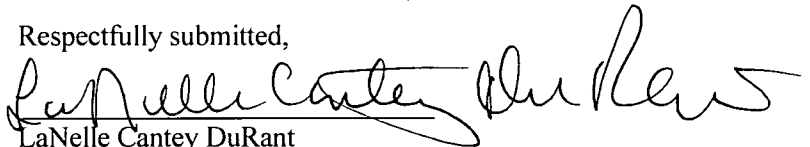
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Counsel for Ferris G. Singley states:

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 June 16, 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 Ferris G. Singley.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 14th day of April, 2015

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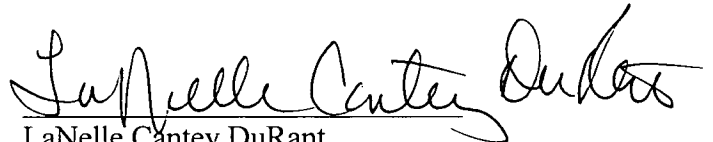
RESPONDENT

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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 Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Ferris G. Singley, #211565, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210 this 14th day of April, 2015.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day  
of April, 2015.

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