

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chester County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

APR 24 2015

S.C. Supreme Court

TRAVIS LAMAR BOWSER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002073

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 trial counsel ineffective for allowing Petitioner Bowser to plead guilty to the two armed robberies that Bowser said he did not commit without counsel conducting a proper investigation?

STATEMENT

In June 2003, the Chester County Grand Jury indicted Travis L. Bowser on three counts of armed robbery (AR). On October 30, 2002, Bowser appeared before the Honorable Paul E. Short, Jr., and entered a guilty plea to the three charges of AR as indicted. Bowser was represented by Brian Gibbons. Judge Short sentenced Bowser to the negotiated cap of twenty years on each charge with all to run concurrent. App. 32, ll. 4 – 22; App. 73. On January 3, 2003, Bowser filed an application for post-conviction relief (PCR). The state filed a return July 14, 2009. An evidentiary hearing was held February 3, 2010 before the Honorable Brooks P. Goldsmith. Bowser was represented by Ross Burton, and the state was represented by Susanne White. App. 13. On March 9, 2010, Judge Goldsmith issued an order denying Bowser's PCR application, and dismissing it with prejudice. App. 45 – App. 54. Bowser did not file an appeal.

On April 12, 2013, Bowser filed a second PCR application. App. 55. The state filed a return and motion to dismiss all claims except the Austin review on December 18, 2013. An evidentiary hearing was held on July 28, 2014 before the Honorable W. Jeffrey Young. Bowser was represented by Nathan J. Sheldon, and the state was represented by Croom Hunter. App. 67. On August 16, 2014, Judge Young issued an order granting Bowser a belated appeal of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and denying all other issues and dismissing them with prejudice. App. 73- App. 75. Bowser's attorney filed a notice of appeal. This petition for a writ of certiorari pursuant to Austin v. State, Id. addressing the issues from the first PCR order as set forth in King v. State, 308 S.C. 348, 417 S.E.2d 808 (1992) is filed simultaneously with a petition for a writ of certiorari.

ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for allowing Petitioner Bowser to plead guilty to the two armed robberies that Bowser said he did not commit without counsel conducting a proper investigation.

Travis Bowser was charged with three counts of armed robbery that occurred on three dates: September 14, 2001; December 11, 2001; and December 14, 2001. App. 77 – App. 87. He pled guilty to all three incidents on October 30, 2002. App. 45 – App. 46. The judge accepted the state’s recommendation and sentenced Bowser to twenty years on each with all to be concurrent. App. 15, ll. 1 – 15; App. 29, ll. 21 – 25; App. 32, ll. 16-17.

At his PCR hearing, the state told the PCR judge that Bowser filed his PCR application timely January 29, 2003, but the attorney general’s office did not receive it until May 4, 2009. That was the reason there was no transcript of the guilty plea. Bowser’s claims of ineffective assistance of counsel were that counsel gave him improper advice and failed to conduct a proper investigation. App. 15, ll. 1 – 15.

Bowser testified that he had tried to fire his plea counsel and asked the judge to grant a continuance so he could retain an attorney. He was not pleased with his plea counsel’s representation. However, the judge told him he had had sufficient time to do that, and they needed to proceed with the case. App. 17, ll. 7 – 24.

Bowser told his attorney that he did not commit two of the three armed robberies. However, his attorney never investigated that issue to determine his innocence. Bowser pled guilty to take the twenty year offer because that was a better deal than pleading to one and getting thirty years and going to trial on the other two. His parents told him to take the plea offer also. App. 18, ll. 18 – App. 20, ll. 12.

He believed his attorney did not do a good job for him as his attorney told him he would probably get only ten years. App. 21, ll. 19 – 25.

Plea counsel testified that Bowser did tell him in October 2002 before his guilty plea that he did not commit two of the armed robberies: the one at Exxon Quick C and the one on Saluda Street. However, counsel thought it was in Bowser's best interest to plead guilty because counsel told Bowser that the solicitor could try him on each of the charges, and he would get more time than twenty years. Counsel denied telling Bowser that he would get ten years on the plea. App. 30, ll. 5 – App. 32, ll. 25.

Counsel admitted that he did not talk to any witnesses, but did talk to family members. He admitted that it would have been better if he had done some investigation. App. 36, ll. 10 – App. 37, ll. 13.

PCR counsel argued that plea counsel was ineffective for allowing Bowser to plead guilty to a charge that he said he did not do. Plea counsel should have investigated to determine if there any witnesses that could substantiate Bowser's innocence. PCR counsel argued that he was hampered in his defense by not having a transcript of the guilty plea. He asked the PCR judge to grant Bowser a new trial. App. 40, ll. 25 – App. 42, ll. 1.

The PCR judge ruled that he found plea counsel's testimony to be credible but found Bowser's testimony to not be credible. App. 52. Bowser failed to establish that plea counsel was ineffective regarding any failure to investigate and to prepare for his case. App. 51. The judge found that plea counsel was thoroughly competent in his representation. Bowser's guilty plea was made freely and voluntarily after he was made aware of the potential exposure he faced on the three charges. App. 52.

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 allowing Bowser to plead guilty to a charge he said he did not do. His guilty plea was not knowingly and voluntarily made when counsel did not investigate nor talk to any witnesses who may have been able to validate Bowser’s claim of innocence.

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,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHESTER COUNTY
BROOKS P. GOLDSMITH, CIRCUIT COURT JUDGE

TRAVIS LAMAR BOWSER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

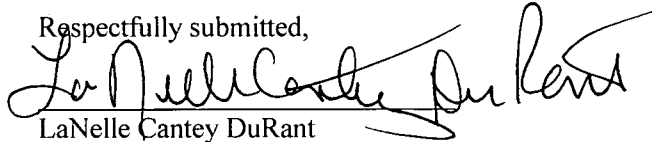
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Lamar Bowser 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 July 28, 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 Travis Lamar Bowser.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 24th day of April, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chester County

Brooks P. Goldsmith, Circuit Court Judge

TRAVIS LAMAR BOWSER,

PETITIONER,

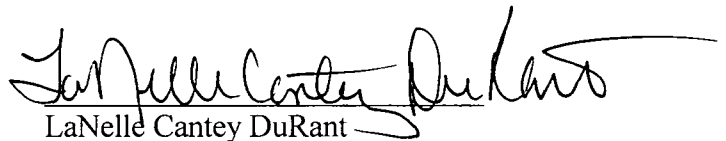
V.

STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

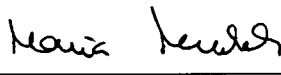
I certify that a true copy of the Johnson petition for writ of certiorari pursuant to Austin v. State and a copy of the appendix in this case have been served on J. Croom Hunter, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Travis Lamar Bowser, #288475, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 24th day of April, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

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

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.