

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Greenville County

James R. Barber, III, Circuit Court Judge

LYNN LARRY HUNT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002529

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not investigating the alibi witness when Petitioner Hunt had given him the name of the witness timely?

STATEMENT

In June 2011, the Greenville County Grand Jury indicted Lynn Larry Hunt on the charges of armed robbery (AR), attempted murder, and possession of a weapon during the commission of a crime of violence. On February 6-8, 2012, Hunt proceeded to trial before the Honorable D. Garrison Hill and a jury. Hunt was represented by Daniel J. Farnsworth, and the state was represented by L. Mark Moyer. App. 1. The jury returned verdicts of guilty on all charges as indicted. Judge Hill sentenced Hunt to fifteen years for the AR and thirty years for the attempted murder with sentences to run consecutively. The judge sentenced Hunt to five years for the gun charge to run concurrently. App. 171; ll. 9 – App. 178, ll. 5. Hunt's attorney filed a notice of appeal. The appeal was perfected by the Division of Appellate Defense in the Commission On Indigent Defense. A brief pursuant to Anders v. California, 386 U.S. 738 (1967) was filed which the Court of Appeals dismissed. State v. Hunt, Op. No. 2013-UP-031 (Ct. App. filed January 16, 2013).

On August 2, 2013, Hunt filed an application for post-conviction relief (PCR). The state filed a return on April 8, 2014. An evidentiary hearing was held on August 28, 2014 before the Honorable James R. Barber, III. Hunt was represented by Caroline Horlbeck, and the state was represented by Karen Ratigan. App. 205. On October 21, 2014, Judge Barber filed an order denying Hunt's PCR application and dismissing it with prejudice. App. 228 – App. 235. Hunt's attorney filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not investigating the alibi witness when Petitioner Hunt had given him the name of the witness timely.

Ms. J. B., the victim, had worked for J.P. Stevens mill in Greenville for about twenty years but the mill closed around 1992. Ms. J.B. was married for about eleven years but in 2010, she found herself living in a tent behind the Goodwill Store along with other homeless people. App. 66, ll. 3 – App. 70, ll. 6. In the early morning hours around seven o'clock on December 14, 2010, Ms. J.B. got into an altercation with Petitioner Hunt whom she had seen around and whom she had spoken with. Hunt allegedly came to her tent with a knife and robbed her of the money she was saving and kept in her purse. He stabbed her in the back but due to the cold weather and the multiple coats she was wearing, she survived. App. 58, ll. 2 – App. 60, ll. 14; App. 70, ll. 2 – App. 78, ll. 3.

Hunt stood trial for AR and attempted murder and possession of a weapon during a crime of violence, and was found guilty. App. 171, ll. 9 – App. 178, ll. 5.

At his PCR hearing, Hunt testified that his trial attorney did not try to get a plea for him but only wanted a jury trial. Hunt's defense at trial was alibi as he was at a friend's house during this incident. He gave the name of his friend, Donald Dickson, to his attorney to investigate. But Dickson did not testify at Hunt's trial and Hunt did not know that his attorney did not find Dickson. App. 209, ll. 12 - App. 217, ll. 22.

Hunt's trial attorney testified at the PCR hearing that hunt never alleged an alibi defense to him. Trial counsel admitted that he had the name of Donald Dickson at Perry Boarding Home in his file notes. However, there was nothing in his file about contacting Dickson. App. 221, ll. 8 – App. 224, ll. 25.

The PCR judge ruled that he found trial counsel's testimony to be credible that counsel and Hunt did not discuss an alibi defense. However, because Dickson did not testify at the PCR hearing, the judge could not speculate as to whether Dickson's testimony would have been helpful to Hunt. The judge ruled that Hunt failed to meet his burden that his trial counsel should have investigated the alibi. App. 231 – App. 232. The PCR judge held that Hunt failed to prove that trial counsel was ineffective in his representation and failed to prove that Hunt suffered any prejudice from the representation. App. 233 – app. 234.

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). 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

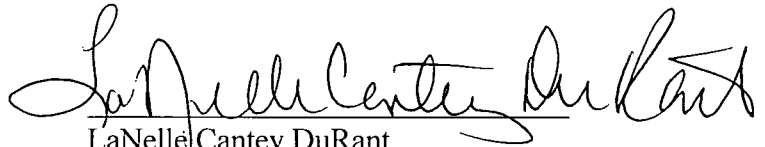
defendant's right to interview potential witnesses against him. State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000); Ard v. Catoe, *supra*.

Trial counsel was ineffective for not conducting a more thorough investigation of Hunt's case. If he had talked to the alibi witness, there was a very reasonable probability that the jury would have found him not guilty.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of July, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

LYNN LARRY HUNT,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lynn Larry Hunt 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 August 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 Lynn Larry Hunt.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of July, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

James R. Barber, III, Circuit Court Judge

LYNN LARRY HUNT,

PETITIONER,

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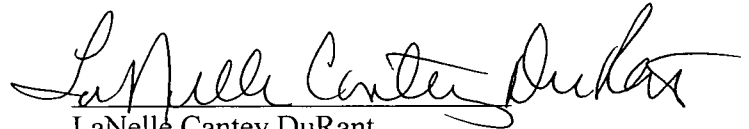
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002529

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 Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Lynn Larry Hunt, #169197, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 8th day of July, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of July, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.