

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Letitia H. Verdin, Circuit Court Judge

RECEIVED

AUG 17 2015

S.C. Supreme Court

WILLIE JAMES POOLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000088

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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ISSUE PRESENTED

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

STATEMENT

In December 2009, the Greenville County Grand Jury indicted Willie Poole on the charges of murder and possession of a weapon during the commission of a violent crime. On January 17, 2012, Poole appeared before the Honorable Robin Stilwell and entered a guilty plea to the lesser charge of voluntary manslaughter and possession of a weapon during a crime of violence. App. 15, ll. 2 – 11. Poole was represented by Timothy Sullivan, and the state was represented by Judy Munson. App. 1. Judge Stilwell sentenced Poole to thirty years on the manslaughter to run concurrent with the twenty-five years Poole was currently serving for armed robbery, and five years on the gun charge to run consecutively to the other sentences. App. 32, ll. 1 – 15. Poole's attorney filed a notice of appeal which the Court of Appeals dismissed. The remittitur was sent on August 13, 2012. On May 22, 2013, Poole filed an application for post-conviction relief (PCR). The state filed a return on January 2, 2014. An evidentiary hearing was held on October 21, 2014 before the Honorable Letitia H. Verdin. Poole was represented by Mills Arial and the State was represented by Karen Ratigan. App. 48. On December 8, 2014, Judge Verdin issued an order denying Poole's PCR application and dismissing it with prejudice. App. 103 – App. 111. Poole's attorney 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 Poole's guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate Petitioner's case.

Poole was charged with the murder of his long time girlfriend, Taleva Allen, on January 11, 2009. Her body was found in a wooded area in Greenville County on January 12, 2009. The autopsy revealed that she had been shot in the chest three times. App. 22, ll. 6 – App. 25, ll. 22.

On January 17, 2012, Poole appeared before the Honorable Robin Stilwell to begin the trial of his case. Poole told the trial court immediately that he needed a lawyer who would help him with his case. He did not want Attorney Sullivan as his counsel. Poole argued that his attorney was not doing a good job. App. 2, ll. 9 – App. 5, ll. 25.

Trial counsel explained that when Poole was arrested in January 2009, he talked with the police and told them about an armed robbery he had done in the past. He was then charged with armed robbery, and was found guilty at trial. Attorney Sullivan represented Poole on that charge. Poole received a sentence of twenty-five years. App. 4, ll. 1 – 22.

The trial judge gave Poole the choice of representing himself or going with Attorney Sullivan. Poole decided to represent himself with trial counsel as stand by counsel. The issue then was whether to proceed with a jury trial or non-jury trial. After the judge explained the two issues, he gave Poole time to think about it. Poole then decided that he would have Attorney Sullivan represent him. App. 6, ll. 1 – App. 14, ll. 24.

Poole then decided to plead guilty to the state's offer of voluntary manslaughter and possession of a weapon during a crime of violence. App. 15, ll. 1 – App. 21, ll. 24. After the solicitor read the facts, the judge asked Poole if he shot and kill the victim. Poole said that he did

not. The judge then said we will go to trial. Poole quickly said: "No, we don't have a trial." The judge told him that they had to because Poole did not plead guilty and denied killing the victim.

Pool immediately said:

I did it. I did it. I did it.

App. 26, ll. 1 – 16.

The judge, after questioning Poole, proceeded with the guilty plea. Poole received a sentence of thirty years on the manslaughter charge to run concurrently to the twenty-five years he was currently serving for the armed robbery and five years on the gun charge to run consecutively to the other two sentences. App. 26, ll. 17 – App. 32, ll. 16.

At his PCR hearing, Poole testified that he felt pressured into pleading guilty because his trial attorney did not do what he needed to do nor what Poole asked him to do to investigate his case. His plea was involuntary, and trial counsel was ineffective. Poole wanted him to subpoena medical records because the victim had HIV and Poole did not. Poole wanted him to subpoena his brother, Antonio Jones, who would say that he was with Poole the night of the incident. If his attorney had investigated these things, Poole would not have pled guilty but would have gone to trial. App. 59, ll. 1 – App. 66, ll. 24.

Poole said he wanted to enter an Alford¹ plea so he would not have to admit guilt. But when he said he did not do the murder, the judge kept on and Poole "felt stuck." He felt he was left with no help. He wanted to go to trial but did not have the evidence to "back up his case." App. 57, ll. 19 – App. 59, ll. 22.

Poole's brother, Antonio Jones, testified at the PCR hearing that he was at a party the night of the incident. Sometime between ten and twelve that night, Poole came to the party. Poole stayed

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

about an hour and then went home. Jones knew Poole went home because he saw Poole's car in front of the house. App. 75, ll. 7 – App. 80, ll. 10.

Poole's trial attorney testified at the PCR hearing that he did not know about Antonio Jones until the day of this PCR hearing. The witnesses he found were not going to be helpful to Poole. He knew that Poole wanted an Alford plea because he had trouble admitting that he shot Taleva. Trial counsel would have been more willing to try the case if Poole were not already serving twenty-five years. As part of the plea offer, the state dropped the LWOP notice, and dismissed an assault and battery charge. App. 81, ll. 18 – Ap. 93, ll. 22.

The PCR judge ruled that Poole did not meet his burden of proving that his plea was involuntary and should have been withdrawn. Because there was sufficient evidence that Poole wanted to continue with the plea as when he adamantly told the judge that he did not want a trial, trial counsel was under no obligation to move to withdraw the plea. App. 108. Trial counsel made a reasonable effort to find alibi witnesses, but most of the witnesses could not be found. Therefore, his performance did not rise to ineffective assistance of counsel. App. 109.

The PCR court found that trial counsel adequately conferred with Poole; conducted a proper investigation, and was thoroughly competent in his representation. App. 109.

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.

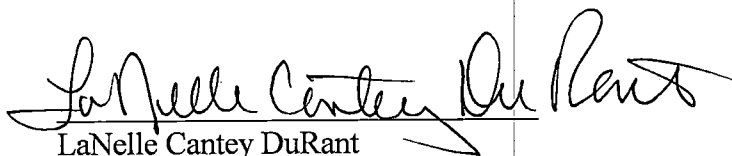
In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court reversed the PCR court and remanded Lounds' case because his defense counsel was ineffective for failing to adequately prepare for trial so as to be able to call key witnesses. Counsel failed to make an independent investigation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

The PCR judge erred in not finding plea counsel ineffective for not insuring that Poole wanted to plead guilty and was satisfied that he knew all of the evidence against him. Counsel did not conduct a thorough investigation. Counsel should have moved to withdraw the guilty plea when Poole had told the judge initially that he did not shoot and kill the victim.

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, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large, sweeping flourish at the end.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of August, 2015.

STATE OF SOUTH CAROLINA

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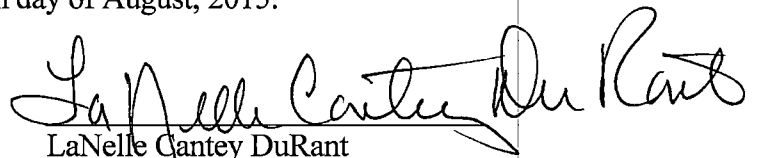
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000088

CERTIFICATE OF SERVICE

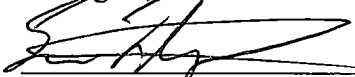
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire and Willie James Poole, #270914, at Perry Correctional Institution this 17th day of August, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of August, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.