

**ORIGINAL**

**RECEIVED**

DEC - 7 2015

**S.C. Supreme Court**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge

---

LOUIE A. CHAPMAN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001063

---

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

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 4

CONCLUSION ..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not adequately investigating Petitioner Chapman's case especially related to his shirt with alleged blood on it, and the fired cartridge cases, and not obtaining the medical records of the victim?

## STATEMENT

In August 2010, the Spartanburg County Grand Jury indicted Petitioner Louie Chapman on the charge of attempted murder. On July 13-14, 2011, Petitioner Chapman proceeded to trial before the Honorable J. Derham Cole and a jury. Chapman was represented by Richard H. Whelchel, and the state was represented by Michael David Morin. App. 1. The jury returned a verdict of guilty as indicted. App. 176, ll. 1 – 23. The trial judge sentenced Chapman to twenty years. App. 179, ll. 11 – 20. Petitioner Chapman's attorney filed a notice of appeal which was perfected with the filing of an Anders<sup>1</sup> brief. The South Carolina Court of appeals dismissed Chapman's appeal. State v. Chapman, Op. No. 2012-UP-682 (Ct. App. filed December 28, 2012).

On February 6, 2013, Chapman filed an application for post-conviction relief (PCR). The state filed a return on March 27, 2014. An evidentiary hearing was held on September 16, 2014 before the Honorable Roger L. Couch. Petitioner Chapman was represented by J. Brandt Rucker, and the state was represented by Suzanne White. App. 202. On March 26, 2015, Judge Couch issued an order denying Petitioner Chapman's PCR application and dismissing it with prejudice. App. 243 – App. 252. Chapman's attorney filed a notice of appeal. This petition follows.

---

<sup>1</sup> Anders v. California, 386 U.S.738 (1967).

## ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not adequately investigating Petitioner Chapman's case especially related to his shirt with alleged blood on it, and the fired cartridge cases, and not obtaining the medical records of the victim.

Petitioner Louie Chapman and Dorothy Geddes had been living together four years at the time of this incident on July 24, 2010. App. 49, ll. 1 – 22. Justin Thorne was the grandson of Dorothy, and had lived with Chapman and Dorothy two months upon Thorne's release from prison. App.43, ll. 1 – 2; App. 111, ll. 1 – 22.

On July 24, 2010, Thorne had come to his grandmother's house to pick her up to take her to his wedding as he was getting married that day. App. 73, ll. 16 – App. 75, ll. 24. According to Geddes, she and Thorne were sitting at the kitchen table when Chapman walked in the house, went in the bedroom, came out of the bedroom and stuck a gun to Thorne's head. App. 44, ll. 1 – App. 46, ll.11. Geddes testified, "I just saw that fist, and jabbed in his neck and in the back of his head. And blood started running out, which Louie run out the door." She called 911. App. 46, ll.12 –App. 48, ll. 18. When cross examined, Geddes stated that she did not see a gun and just assumed Thorne had been shot because he was bleeding badly. App. 57, ll. 1-13.

Officers with the Spartanburg County Sheriff's Department found a bullet and two shell casings in Geddes' home. The officers did not find a gun in connection with this incident. App. 89, ll. 1-24. . They also found a white shirt at the scene with what appeared to be blood on it. App. 98, ll. 22 – 25. Officer Michael Séan Mix admitted that neither the shirt nor the shell casings and bullet had been tested. App. 100, ll. 2 – App. 101, ll. 1.

Thorne admitted that he did not see Chapman with a gun. App. 82, ll. 1 –App.83, ll. 18. Thorne did not remember hearing a gun shot. App 79, ll. 23-25. Thorne testified that during his

two day hospitalization doctors found a bullet in the back of his head and a cracked vertebra. App. 78, ll. 1 – App. 79, ll. 25. The State failed to produce any medical evidence to support Thorne’s testimony.

Petitioner Chapman testified at his trial that he did not shoot Justin Thorne. App. 108, ll. 8 – 25; App. 115, ll. 22 – 25. He and Thorne did not particularly like each other, but Chapman did not trust Thorne. App. 118, ll. 12 – 21. Chapman saw a young white male pull up at the end of the road as Chapman was leaving. He thought that person may have shot Thorne. App. 116, ll. 1 – 15. Chapman went looking for yard sales and then fishing the day of the incident and stayed Saturday night and Sunday. App. 120, ll. 22 – App. 122, ll. 8.

The jury convicted Chapman of the attempted murder of Thorne. App. 176, ll. 1 – 19.

At his PCR hearing, Chapman testified that his trial lawyer was ineffective because he did not investigate the shirt with the substance that appeared to be blood. Chapman believed the substance was transmission fluid because Chapman had been working on his truck for weeks and used old shirts. His attorney just wanted to talk about a guilty plea. App. 206, ll. 1 – App. 208, ll. 4. Chapman did not want to plead guilty because he was not guilty. App. 209, ll. 1 – 20. There was a bullet and some shell casings found on the table. They were never tested to see if the bullet had been fired. His trial attorney should have investigated those. App. 218, ll. 5 – 13. Chapman denied being at the scene when the shooting occurred. App. 225, ll. 1 – 226, ll. 11.

Chapman’s trial attorney believed that a guilty plea would have been in Chapman’s best interest. The state made three plea offers which Chapman rejected. App. 229, ll. 1 – App. 231, ll. 12. Trial attorney said he would have had the shirt tested if that had been “something they could have testified about.” He really did not remember. App. 232, ll. 22 – App. 233, ll. 4. He could not have had the bullet and shell casing tested because no gun was ever found to test them. App. 233, ll. 9 –

17. Counsel believed there was no question about Thorne being shot. When asked if counsel had the medical records, he responded that it was in the discovery that Thorne had gone to the hospital. App. 233, ll. 18 – App. 234, ll. 2. He knew that Chapman did not want to plead guilty. App. 236, ll. 21 – 24.

The PCR judge ruled that he found the testimony of trial counsel to be more credible than the testimony of Petitioner Chapman on all allegations. App. 245. Petitioner Chapman's allegations that trial counsel did not conduct an adequate pre-trial investigation was without merit. Chapman did not present any evidence to support this issue of his defense. App. 248- App. 249. The judge continued to rule that Petitioner Chapman was not prejudiced by any alleged deficient representation of counsel because there was overwhelming evidence of Chapman's guilt. App. 250. The judge found trial counsel was thoroughly competent in his representation. App. 251.

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).

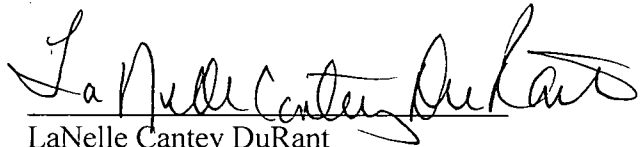
A criminal defense attorney has a duty to investigate but it is limited to a reasonable investigation. But at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, *supra*.

Trial counsel was ineffective for not conducting a thorough investigation into Chapman's case. Counsel should have had an independent test performed on the shirt. Counsel could, at the least, have checked to see if the bullet had been fired. Chapman was prejudiced because he did not have all of this evidence.

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 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 7th day of December, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO SPARTANBURG COUNTY  
ROGER L. COUCH, CIRCUIT COURT JUDGE

---

LOUIE A. CHAPMAN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001063

---

PETITION TO BE RELIEVED AS COUNSEL

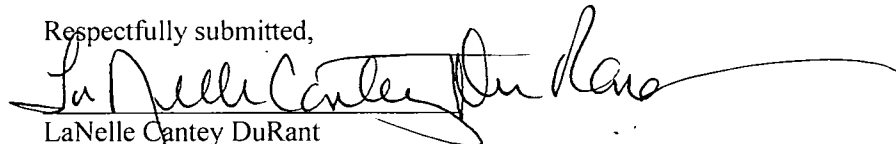
---

Counsel for Louie Alvoid Chapman 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 September 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 Louie Alvoid Chapman.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of December, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge  
\_\_\_\_\_

LOUIE A. CHAPMAN PETITIONER,

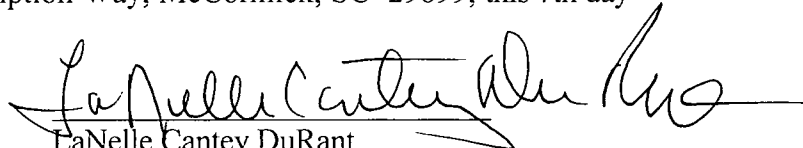
V.

STATE OF SOUTH CAROLINA, RESPONDENT

APPELLATE CASE NO. 2015-001063

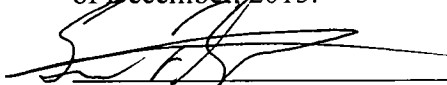
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 Alicia Olive, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Louie Alvoid Chapman, #098290, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 7th day of December, 2015.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day  
of December, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.