

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lee County

S.C. Supreme Court

R. Ferrell Cothran, Jr., Circuit Court Judge

LAQUAN MARSHALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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 counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly?

STATEMENT

In August 2009, the Lee County Grand Jury indicted LaQuan Marshall on five counts of distribution of cocaine base and four counts of distribution within the proximity of a school. On October 6, 2010, Marshall appeared before the Honorable George C. James, Jr. and entered a guilty plea to four counts of distribution of cocaine base (crack) second offense and four counts of distribution within the proximity of a school. He was represented by Deborah Butcher and the state was represented by Paul Fata. Judge James sentenced Marshall to fifteen years on each count with all sentences running concurrently as recommended by the state. App. 2, ll. 8 – 17; App. 22, ll. 1 – 19.

Marshall filed an application for post-conviction relief (PCR) on June 16, 2010. The state filed a return on February 17, 2011. An evidentiary hearing was held on October 25, 2011 before the Honorable R. Ferrell Cothran, Jr. Marshall was represented by Charles T. Brooks III, and the state was represented by Robert D. Corney. On February 3, 2012, Judge Cothran issued an order denying Marshall's PCR application, and dismissing it with prejudice. Marshall's attorney filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly.

The City of Bishopville was conducting an undercover drug operation during the month of May 2009. The police sent a confidential informant (CI), who was wired with a microphone and video camera, to the home of Marshall on May 14, 2009; May 15, 2009; May 21, 2009; May 29, 2009. The CI purchased a quantity of cocaine base (crack) with each visit. Marshall's home was near a primary school. App. 15, ll. 7 – 25; App. 16, ll. 1 – 25; App. 17, ll. 1 – 22. Marshall pled guilty to all of these charges on October 6, 2010. App. 1; App. 11, ll. 14 – 17.

At his PCR hearing, Marshall testified that he did not want a new trial but really wanted a reconsideration of his sentence. He felt he could not win at a trial. App. 46, ll. 2 – 25; App. 47, ll. 1 – 25; App. 48, ll. 1 – 3. When counsel informed him that his only relief at PCR was a new trial, he stated that he still wanted to go forward. App. 48, ll. 4 – 10.

Marshall's complaint was that his guilty plea was not knowingly entered because his attorney told him he would get a sentence of fifteen, non-violent and he would serve only fifty-one percent (51%) of the sentence and be home in seven and one-half years. When he arrived at DOC, he learned he had to serve eighty-five percent. He felt he was promised one thing and received another. App. 48, ll. 11 – 25; App. 49, ll. 1 – 16.

Marshall's plea counsel testified that as a practice, she did not tell her clients what percentage of their sentence they have to serve. App. 57, ll. 1 – 25. She testified that Marshall was facing a life sentence if he went to trial. App. 58, ll. 1 – 3.

The PCR judge ruled that he found plea counsel's testimony to be credible while finding Marshall's testimony to not be credible. App. 66. He ruled that Marshall did not meet his burden of

proof that plea counsel was ineffective, and that his guilty plea was entered knowingly and voluntarily. App. 67.

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). 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).

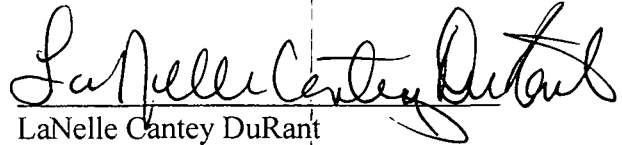
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (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). Judges are required to give the defendant an explanation of the defendant’s

waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

CONCLUSION

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

Respectfully submitted,

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

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 20h day of September, 2012.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEE COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

LAQUAN MARSHALL,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

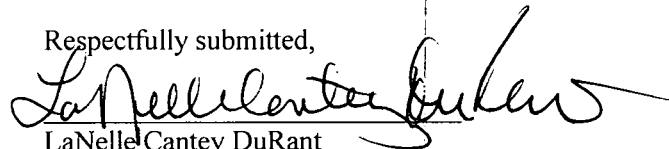
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Laquan Marshall 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 October 25, 2011. 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 Laquan Marshall.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of September, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

LAQUAN MARSHALL,

PETITIONER,

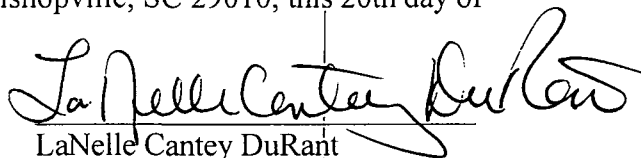
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

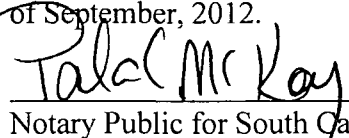
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Laquan Marshall, #241645, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 20th day of September, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of September, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.