

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**SC SUPREME COURT**

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Certiorari to Edgefield County

R. Lawton McIntosh, Circuit Court Judge  
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JULIUS L. ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002305  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

LANELLE CANTEY DURANT  
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Division of Appellate Defense  
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ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring that Petitioner Rogers' guilty plea was entered freely, voluntarily, and knowingly because he did not fully understand the consequences of his guilty plea as he believed he was getting a five year sentence with probation and restitution?

## STATEMENT

On June 13, 2013, someone entered the home of Richard Wall in Edgefield County, and took five guns, four hunting bows as well as a printer, laptop computer, chain saws, and jewelry. App. 12, ll. 23 – App. 13, ll. 25. The owner had installed a deer camera on his property. The deer camera had a picture of Petitioner Rogers carrying the stolen items from the house. The camera also had a picture of Rogers' car. The police received a tip from a confidential informant (CI) that this person was Petitioner Rogers. App. 14, ll. 1 – 18.

When the police drove by Rogers' house to see if the same car as was in the deer camera picture was there, they saw the same white 2001 Concord vehicle in Rogers' yard. The car had the same sticker as was on the car in the picture from the deer camera and the same broken headlight. The police obtained a warrant and returned to Rogers' home and arrested him for burglary first degree. According to the police, Rogers voluntarily gave a statement admitting to the burglary of Walls' home. The police investigator said that Rogers told him that he did this robbery because he "had kids to feed." App. 14, ll. 19 – App. 16, ll. 3.

On July 31, 2013, the Edgefield County Grand Jury indicted Petitioner Rogers on the charge of burglary first degree. App. 114; App. 105. On August 5, 2013, Petitioner Rogers appeared before the Honorable R. Lawton McIntosh and entered a guilty plea to the lesser charge of burglary second degree pursuant to the plea agreement. App. 1-App. 4. Rogers was represented by Michael W. Chesser, and the state was represented by Ervin J. Maye. App. 1.

At the guilty plea, the state told the court that the plea agreement was for Rogers to plead to the lesser included charge of burglary second degree violent without any other negotiations nor recommendations. App. 4, ll. 3 – 9.

During his guilty plea when the judge asked Rogers if he had any questions of the judge or of his attorney, Rogers said he did have a question for his attorney. The judge told Rogers to just whisper in his attorney's ear which Rogers did. After a brief pause, Rogers told the court he still wanted to go forward with his plea. App. 10, ll. 1 – 23.

For his mitigation, Rogers told the court that he committed this robbery in order to support his two minor children. He also ran into difficulty when he allowed his ex-wife to move in with him to help out her and her son when she did not have a job. She left one day while he was at work and took many of his things and his money. He had trouble paying his rent although he was working. He apologized to the family and said that was not the life he wanted. App. 18, ll. 25 – App. 21, ll. 16.

The judge sentenced Rogers to fourteen years in prison. App. 25, ll. 21 – App. 26, ll. 3.

Rogers did not appeal his conviction nor sentence. App. 105. On December 6, 2013, Petitioner Rogers filed an application for post-conviction relief (PCR). The state filed a return on March 14, 2014. An evidentiary hearing was held on April 23, 2015 before the Honorable Brooks P. Goldsmith. Petitioner Rogers was represented by Courtney C. Pope, and the state was represented by Walt Whitmire. App. 54.

At the PCR hearing, Rogers' PCR counsel told the court that Rogers' allegation was that trial counsel was ineffective because Rogers' guilty plea was not voluntary. App. 61. Rogers testified that Gregory Seigler had been his attorney before Michael Chesser and Rogers thought Mr. Seigler still was until the day of his plea. Rogers met with Mr. Chesser for the first time on the day of his plea. Mr. Chesser came to the holding cell and told Rogers that he had been appointed to represent Rogers now. They talked about ten minutes before the plea. Mr. Chesser told him that he had a plea deal for zero to fifteen years. App. 62, ll. 1 – App. 64, ll. 22.

Rogers said he told his attorney he was supposed to get a five year probationary sentence as promised by Investigator Ireland. Rogers explained that when he was first arrested, Investigator Ireland told him they had pictures of him at the crime scene. Then Rogers decided to cooperate to help the family get their stolen items back. According to Rogers, Investigator Ireland told him that if he cooperated, the investigator would talk with the solicitor to “get him five years on a second degree burglary suspended to probation and restitution.” That was the sentence Rogers was expecting to get. That was the reason he gave a confession. App. 65, ll. 1 – App. 67, ll. 13.

When he told Mr. Chesser of the promise by Investigator Ireland, Chesser told him he would talk with Investigator Ireland. Rogers did not know if Chesser did or not because Rogers was taken to the courtroom to plead. App. 67, ll. 14 – App. 68, ll. 24.

During his plea, Rogers was still thinking, even after the judge’s questions, that he was still going to “get the deal that was promised.” When the judge allowed him to ask his plea counsel a question during the plea, Rogers said he asked his attorney, Mr. Chesser, if the state was still going to honor the deal and if everything was still the same. Rogers said his attorney told him yes. The deal that Rogers believed he was receiving was five years probation and restitution. App. 71, ll. 4 – App. 73, ll. 3.

During the PCR hearing, when asked if he wanted to tell the PCR judge anything, Rogers testified:

Well, I wouldn’t—I didn’t—I didn’t come back for a new trial. I just came back because I relied on Investigator Ireland’s promise, you know, with the probation and stuff.”

App. 75, ll. 6 – 11.

Rogers' plea attorney, Michael Chesser, testified at the PCR hearing that Rogers' case was "pretty much worked out" by the time he received it. Greg Seigler, the tri-county public defender, had been representing Rogers and already had a sentencing sheet signed by Seigler and Rogers. Mr. Chesser was told that Seigler had a conflict but he did not know what it was. That was the reason Chesser was appointed. App. 82, ll. 25 – App. 84, ll. 22.

According to plea counsel, Mr. Chesser, "there was not a deal." The sentencing sheet which was already signed by Rogers, indicated a plea to burglary second violent with no negotiations. App. 85, ll. 1 – App. 86, ll. 25. Plea counsel admitted that he advised Rogers to take the plea without negotiations. App. 93, ll. 3 – 8. He did not remember advising Rogers of his right to an appeal. App. 94, ll. 1 – 8.

PCR counsel argued to the court in her closing that it was clear that "Mr. Rogers did not have a very clear understanding enough to make a voluntary decision to make his plea." She argued that plea counsel did not have adequate time to conduct discovery review with Rogers. App. 95, ll. 19 – App. 96, ll. 6.

On October 6, 2015, Judge Goldsmith issued an order denying Rogers' PCR application and dismissing it with prejudice. App. 105-App. 112. The PCR judge ruled that Rogers failed to make a "prima facie" case of how plea counsel was ineffective. The judge found this allegation to be without merit. App. 110. The judge's order provided that "Applicant's allegations were solely supported by his dubious and fanciful storytelling." The judge found Rogers' testimony to be "incredible" and plea counsel's testimony to be "convincing." App. 107.

The PCR judge denied Rogers' PCR application and dismissed it with prejudice. Rogers filed an appeal. This petition follows.

## ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Rogers' guilty plea was entered freely, voluntarily, and knowingly because he did not fully understand the consequences of his guilty plea as he believed he was getting a five year sentence with probation and restitution.

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*.

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 one 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. Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006); 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 Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with certain 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).

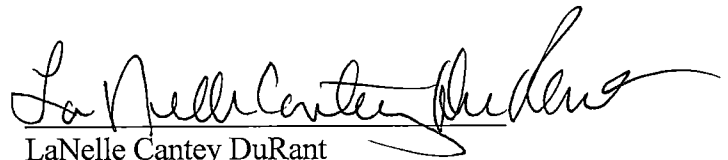
In Craddock v. State, 327 S.C. 303, 491 S.E.2d 251 (1997), the Supreme Court ruled that where a defendant pleads guilty in exchange for trial counsel’s promise of a certain sentence, and does not receive that sentence, his guilty plea is invalid.

Rogers’ plea counsel was ineffective for not insuring that Rogers understood clearly that the only deal was for him to plead to the lesser charge of burglary second degree. Counsel needed to make sure that Rogers understood he was not getting probation, and especially after Rogers told counsel that he believed the deal to be probation. The PCR court erred in not finding plea counsel ineffective for not providing Rogers all of the information he needed to enter his guilty plea. It was clear from the record that Rogers’ guilty plea was not entered into voluntarily and knowingly.

CONCLUSION

Based on the above, certiorari should be granted, the order of the PCR court reversed, and the case remanded.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written in a cursive style.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of April, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO EDGEFIELD COUNTY  
R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

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JULIUS L. ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002305

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PETITION TO BE RELIEVED AS COUNSEL

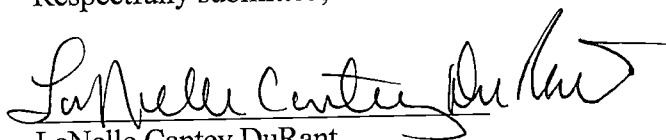
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Counsel for Julius L. Rogers states:

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 April 23, 2015. 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 Julius L. Rogers.

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 12th day of April, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Edgefield County

R. Lawton McIntosh, Circuit Court Judge

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JULIUS L. ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT


APPELLATE CASE NO. 2015-002305

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CERTIFICATE OF SERVICE

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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 Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Julius L. Rogers, #247422, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 12th day of April, 2016.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day  
of April, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.