

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Richland County
Honorable Tanya A. Gee, Circuit Court Judge

RECEIVED

AUG - 5 2016

VINCENT RICE,

SC SUPREME COURT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002479

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

I N D E X

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Rice’s guilty plea was entered freely and intelligently when Petitioner Rice did not fully understand the evidence against him and counsel failed to explain the elements of PWID and the drug analysis6

CONCLUSION.....8

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

ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring that Petitioner Rice's guilty plea was entered freely and intelligently when Petitioner Rice did not fully understand the evidence against him and counsel failed to explain the elements of PWID and the drug analysis?¹

¹ The PCR judge remanded Petitioner Rice's case to the Honorable DeAndrea Benjamin for a limited resentencing hearing to allow the court to sentence Petitioner within the range allowed by statute on indictments 2012-GS-40-0890 and 2012-GS-40-01616.

STATEMENT

On December 11, 2011, Petitioner Rice was found by the police asleep in a car alone parked at the Lil Cricket gas station on a Sunday morning. Allegedly, a bag of 9.1 grams of marijuana packaged in ten smaller baggies was found on his lap. App. 10, ll. 4 – 25. After Rice exited the vehicle, a large plastic bag was found in the driver's seat where he had been sitting. In this bag were four baggies of "almost" one gram of cocaine; one bag of .6 grams of crack; and a bag with seven capsules of 20-milligram amphetamine salts (generic Adderall), and five 10 milligram amphetamine salts. Rice was arrested and charged with PWID cocaine which was .92 grams in the four baggies; PWID marijuana; possession of crack; and possession of a controlled substance. App. 11, ll. 1 – 24.

Rice bonded out of jail after six days. On January 25, 2012, Rice was arrested at the University of South Carolina (USC) Thomas Cooper Library because there was a "trespass notice" against him for the library. The USC police arrested him when he was found around the book stacks. The police had noticed that he threw down a book bag just before the arrest. App. 12, ll. 1 -21. Marijuana was found in the bag. Rice was arrested and taken to police headquarters. The police found in the bag a larger bag with 10.67 grams of marijuana; two baggies with 1.7 grams of crack; an unlabeled prescription bottle with 14 hydrocodone pills and 5 oxycodone pills. App. 13, ll. 1 – 15.

The state offered, in exchange for Rice's guilty plea, to reduce the two counts of PWID cocaine third offense to PWID second which reduced the mandatory minimum from ten years to five years, and a negotiated cap of ten years. This gave Rice a sentence range of five to ten years. App. 6, ll. 1 – 20.

On December 3, 2013, Petitioner Rice appeared before the Honorable DeAndrea G. Benjamin and entered a guilty plea pursuant to North v. Alford.² App. 1; App. 7, ll. 14 – 21. Rice was represented by Mathias Chaplin, and the state was represented by Britton All and Joseph Shenkar. App. 1. Rice pled guilty to two counts of PWID marijuana third; one count of possession of crack third; two counts of possession of a controlled substance second; two counts of PWID cocaine second; PWID marijuana within the proximity of a school; and PWID cocaine within the proximity of a school. App. 4, ll. 8 – App. 5, ll. 25. Judge Benjamin sentenced Petitioner Rice to seven years incarceration on each of the drug offenses except the two counts of possession of a controlled substance for which Rice received a two years sentence on each. All of the sentences were to run concurrent. App. 33, ll. 1 – App. 34, ll. 15.

Counsel filed a notice of appeal which was dismissed by the South Carolina Court of Appeals for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. App. 168.

On February 27, 2014, Petitioner Rice filed an application for post-conviction relief (PCR). The state filed a return on June 26, 2014. An evidentiary hearing was held August 26, 2015 before the Honorable Tanya A. Gee. Rice was represented by Jonathan D. Waller, and the state was represented by J. Clayton Mitchell. App. 52.

At his PCR hearing, PCR counsel explained to the court that Petitioner Rice was raising claims of ineffective assistance of counsel because his guilty plea was involuntary because counsel did not explain or review the drug analysis with Rice. App. 56, ll. 9 – 25.

² North Carolina v. Alford, 400 U.S. 25 (1970).

Rice testified that plea counsel convinced him to plead guilty. App. 62, ll. 1-2. Rice did not understand the indictments for PWID as no one ever explained the legal requirements for PWID. App. 69, ll. 1 – 25; App. 87, ll. 1 – App. 88, ll. 19. Plea counsel would not discuss his legal strategy if they went to trial. Counsel told him that he had “no valid legal challenges.” App. 72, ll. 3 – App. 73, ll. 11. Rice stated that if he had known then what he knew later, he would not have pled guilty. Rice testified that “the due process clause provides that a defendant should understand how his conduct satisfies the elements of the charged offense.” App. 87, ll. 20 – App. 88, ll. 15.

Plea counsel testified that he told Rice that he was a trial lawyer and not a plea lawyer. Counsel was very concerned about the amount of time that Rice was facing. He said that Rice did not always like everything counsel had to say to him but counsel “kept it real” with Rice. App. 109, ll. 1 – App. 111, ll. 25. Counsel believed that there was not a lot of “dope” in Rice’s case but there was a lot of prison time. App. 138, ll. 12.

Counsel said that the state was ready to go to trial on just the first incident on the day of the plea. That meant that Rice could have faced life without parole if he lost the first trial and the state proceeded on the second incident. Counsel then worked to get the negotiated plea that included all the charges. Counsel then advised Rice to plead guilty to have a clean slate and no pending charges. Counsel also suggested the Alford plea. App. 136, ll. 1 – App. 138, ll. 20. The PCR judge found counsel’s testimony to be credible and found Petitioner Rice’s testimony regarding counsel’s advice and actions to not be credible. App. 171. The judge found that Petitioner Rice’s guilty plea was entered freely, knowingly and voluntarily. The judge found that Rice was advised of the rights he was waiving by pleading guilty, and that he took a favorable

plea offer to avoid facing “upwards of 140 years’ imprisonment.” The judge found that Rice had full knowledge of the plea agreement. App. 171 – App. 172.

ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Rice's guilty plea was entered freely and intelligently when Petitioner Rice did not fully understand the evidence against him and counsel failed to explain the elements of PWID and the drug analysis.

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

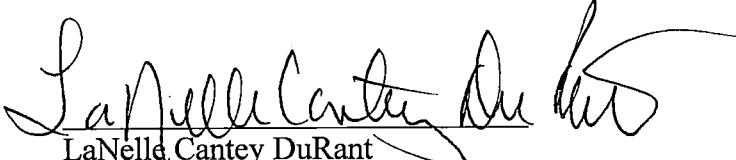
right to trial by jury Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with certain certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege”. State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give 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).

The PCR court erred in finding that plea counsel was not ineffective for not insuring that Rice’s plea was entered voluntarily and knowingly.

CONCLUSION

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

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of August, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Honorable Tanya A. Gee, Circuit Court Judge

VINCENT RICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

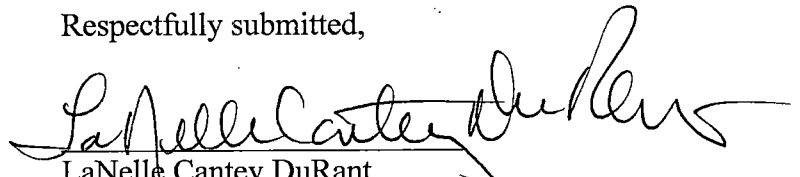
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Vincent Rice 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 1/4/2016. 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 Vincent Rice.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of August, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Honorable Tanya A. Gee, Circuit Court Judge

VINCENT RICE,

PETITIONER,

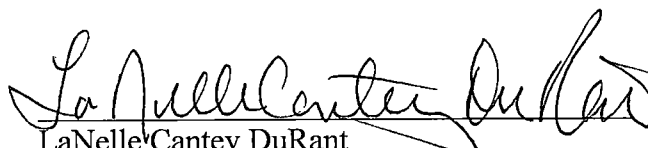
V.

STATE OF SOUTH CAROLINA,

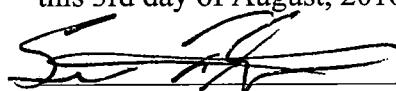
RESPONDENT

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 Jessica Kinard, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Vincent Rice, 316178 at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC, 29010, this 3rd day of August, 2016.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of August, 2016.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022