

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

RECEIVED

Honorable Thomas A. Russo, Circuit Court Judge

OCT 24 2016

S.C. SUPREME COURT

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ANCEL RAMON HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000486

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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LaNelle Cantey DuRant  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring that Petitioner Harris' guilty plea was entered freely and intelligently when Petitioner Harris felt he had no choice but to plead guilty in order to avoid a lengthy sentence?

## STATEMENT

The state's version of the incident on October 15, 2012, was that Rashaun Williams, the victim, gave a ride to Petitioner Harris and his sister to the incident location in Myrtle Beach. Once at the location, Petitioner Harris allegedly pulled a handgun, pointed it at Williams, and ordered Williams out of the car. Petitioner Harris then allegedly took Williams' money, cell phone, key to the car, and the key to his scooter. Harris told Williams to walk toward the woods. When Williams refused, Petitioner Harris fired a shot toward Harris but Williams was not hit. Harris then took Williams' car and left Williams. App. 2, ll. 12 – App. 3, ll. 2.

Petitioner Harris was charged with attempted murder and carjacking. App. 2, ll. 24 – App. 3, ll. 2.

In January 2013, the Horry County Grand Jury indicted Petitioner Harris on the charges of attempted murder, carjacking, strong-arm robbery, possession with intent to distribute heroin, and possession with intent to distribute marijuana. App. 75; App. 83- App. 98. On October 15, 2013, Petitioner Harris appeared before the Honorable Edward B. Cottingham and entered a guilty plea to attempted murder and carjacking. He was represented by Paul Taylor, and the state was represented by Joshua D. Holford. The state recommended a sentence of fifteen years on each charge to run concurrent. App. 1 – App. 2, ll. 11.

The plea judge accepted the recommendation and sentenced Harris to fifteen years on each charge to run concurrent. App. 8, ll. 1 – 5. Petitioner Harris did not appeal his convictions nor sentences. App. 76.

On March 12, 2014, Harris filed an application for post-conviction relief (PCR). The state filed a return on July 11, 2014. An evidentiary hearing was held on November 9, 2015 before the

Honorable Thomas A. Russo. Petitioner Harris was represented by Tristan M. Shaffer, and the state was represented by Jessica Kinard. App. 27.

Plea counsel testified at the PCR hearing concerning any defense Harris had since the victim had identified Harris. Counsel reported that Harris told him that he was selling “weed” to Williams in Williams’ car. When Harris brought out the marijuana, the victim Williams did not have the money. Then Harris pulled out his gun and fired a round next to Williams’ head. Then Harris took Williams’ car. App. 42, ll. 7 – App. 43, ll. 24; App. 37, ll. 12 – App. 38, ll. 1.

Plea counsel admitted that he never spoke with the victim Williams since this was a guilty plea. App. 37, ll. 2-3. On cross-examination, counsel stated that he did advise Petitioner Harris to plead guilty considering all of the evidence against him. Counsel explained that there was enough evidence to convict Harris. App. 47, ll. 22 – App. 48, ll. 8. Counsel told Harris that the fifteen years was a “good deal.” App. 50, ll. 1 – 16. Plea counsel also reported that Harris never indicated that he wanted a trial. He just said he would take the plea. App. 51, ll. 1 – 7.

Petitioner Harris testified and at first reported that this incident was not about drugs as he had paid for a ride. He said it was “never nothing about no money or nothing like that.” App. 56, ll. 20 – App. 57, ll. 3. Then he admitted that the victim had called him “to buy.” When Harris showed the victim Williams what he had, Williams tried to snatch it. That was when Harris pulled his pistol, and Williams “backed away.” When Williams ran away, Harris took his car to return to where he was supposed to be. App. 57, ll. 4 – 20.

PCR counsel then explained to the court that the underlying issue was that Harris did not voluntarily enter his guilty plea. Counsel explained that Harris had been before another judge about two weeks earlier to plead guilty. However, Harris told that court something that made the judge believe that his plea was not voluntary. Therefore, that judge did not accept Harris’ plea.

At his second plea, Harris said he told the court what his attorney told him to say. This meant that his second guilty plea was not voluntary. App. 58, ll. 8 – App. 59, ll. 4.

Harris testified that he told the first plea judge that he would plead guilty if the sentence was “reasonable.” But Harris said he was not taking fifteen years for “something he did not do.” App. 59, ll. 11 – 23.

At the second plea, Harris felt “his hand was kind of forced.” His attorney basically told him he had no choice. App. 60, ll. 1 – App. 61, ll. 8. On cross-examination, Harris said he really wanted to go to trial, but his attorney told him he could get forty years. So Harris took the fifteen year plea offer to avoid the forty year sentence. App. 64, ll. 13 – 24; App. 67, ll. 15 – 17.

The PCR judge ruled that he found plea counsel’s testimony credible and found Morris’ testimony not credible. The judge wrote that Morris failed to meet his burden that plea counsel rendered ineffective assistance of counsel. App. 79. The judge wrote: “This court finds a real issue with the Applicant’s credibility, especially when balanced against that of plea counsel.” App. 80. The judge held that Harris suffered no prejudice based on the record. App. 80.

## ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Harris' guilty plea was entered freely and intelligently when Petitioner Harris felt he had no choice but to plead guilty in order to avoid a lengthy sentence.

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 Harris’ plea was entered voluntarily and knowingly. Harris made it clear that he did not want to plead guilty as shown by the first plea which that judge denied.

CONCLUSION

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

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of October, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Thomas A. Russo, Circuit Court Judge

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ANCEL RAMON HARRIS,

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PETITION TO BE RELIEVED AS COUNSEL

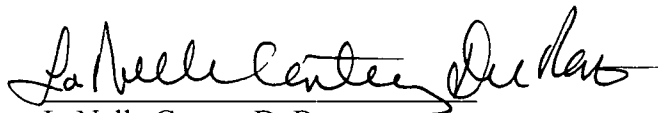
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Counsel for Ancel Ramon Harris states:

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 record of petitioner's trial before the Honorable Thomas A. Russo, which was held on November 9, 2015 (Evidentiary Hearing), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Ancel Ramon Harris.

Respectfully Submitted,

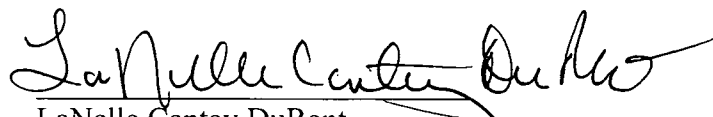


LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of October, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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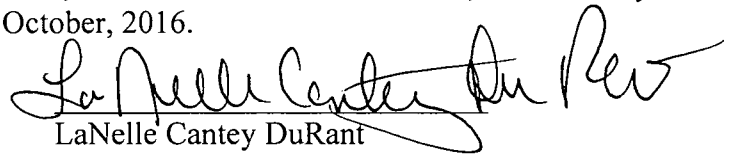
RESPONDENT

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Caitlin Hastings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Ancel Ramon Harris, #357430, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 24th day of October, 2016.

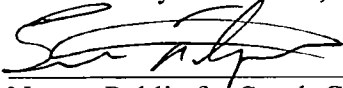


LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 24th day of October, 2016.



(L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.