

STATE OF SOUTH CAROLINA

**ORIGINAL**

IN THE SUPREME COURT

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Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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LASHEDA COKLEY,

PETITIONER

**RECEIVED**

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S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000822

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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 not finding plea counsel ineffective for not insuring that Petitioner Cokley's guilty plea was voluntarily and knowingly entered when Petitioner Cokley testified that her plea counsel coerced her into taking the state's offer of ten years when the case was five years old?

## STATEMENT

Earlier on December 29, 2009, Lakietha Vaughn, who was the victim in this case, and her friend Shonta Helton, had been to visit Petitioner Cokley at Petitioner's father's home where Petitioner lived with her children. Lakeitha and Shonta left and went to McDonald's where Shonta was going to buy food for Lakeitha's children. However, Shonta realized that money was missing from her purse. Shonta thought that Petitioner Cokley or her children had taken the money when Shonta visited there earlier. App. 7, ll. 14 – 25.

Shonta and Lakeitha returned to Petitioner Cokley's home and confronted her. A verbal altercation between all followed. Cokley asked the other two women to leave, and they proceeded to go outside. The verbal altercation continued. Then Lakeitha Vaughn was cut allegedly with a box cutter on her face, chest, and neck five times. App. 8, ll. 1 – App. 9, ll. 25. Petitioner Cokley was arrested and gave a statement to police admitting to the incident. App. 10, ll. 1 – 11.

During the following years after this incident, Petitioner Cokley would see the victim in the community as they knew each other. Petitioner did apologize to the victim, but the victim still wanted to continue with the charge as she "wanted justice." App. 10, ll. 12 – 23.

Cokley was charged on the arrest warrant with assault and battery with intent to kill. (ABWIK). App. 88. The Sumter County Grand Jury indicted Cokley on the charge of ABWIK on June 4, 2015. App. 86. On June 16, 2015, Cokley appeared before the Honorable W. Jeffrey Young and entered a guilty plea to ABWIK for a negotiated sentence of ten years. App. 7, ll. 1-8. Cokley was represented by Jacob McFadden, and the state was represented by John Meadors. App. 1.

At the guilty plea, when the judge asked Cokley if she wanted to plead guilty to ABWIK for negotiated ten years, she responded: “Actually say yes.” And then said yes. App. 6, ll. 1 – 12. When the judge asked her if the facts in the indictment were true, plea counsel asked for a pause. Cokley did not respond. The judge continued by asking again if she were pleading to ABWIK for ten years. There was a pause in the proceedings again. Then Cokley responded with yes. App. 6, ll. 13 – App. 7, ll. 10.

After the solicitor recited the alleged facts, the judge asked Cokley if she agreed with the facts. She said: “No.” When the judge asked what the difference, Cokley started to tell him, but the judge stopped her and asked if she admitted guilt. Cokley responded: “Yes, I did cut her.” App. 10, ll. 24 – App. 11, ll. 8.

The judge then told her that she could not plead guilty and assert any defenses. Plea counsel then asked if he could speak with Cokley which he did. Then she said that she agreed with the facts. App. 11, ll. 9 – 25. Later during the plea, the judge asked Cokley if she wished to waive her rights against self-incrimination. There was another pause in the proceedings. The judge asked her again and she finally said yes. App. 12, ll. 23 – App. 13, ll. 11.

The judge accepted the negotiated sentence and sentenced Cokley to ten years. App. 18, ll. 1 – 11.

Cokley filed an appeal which was dismissed by the Court of Appeals pursuant to Rule 203(d)(B)(iv), for failure to provide a sufficient explanation. App. 77.

On September 8, 2015, Cokley filed an application for post-conviction relief (PCR). The state filed a return on November 17, 2015. An evidentiary hearing was held on March 14, 2016 before the Honorable Brooks P. Goldsmith. Cokley was represented by Lance S. Boozer, and the state was represented by Daniel F. Gourley, II. App. 37.

At the PCR hearing, Cokley testified that she wanted the PCR court to grant her a new trial. App. 43, ll. 1 – 17. She agreed that she had several allegations initially for ineffective assistance of counsel which included counsel’s failure to argue the castle doctrine, negligence, and misrepresentation. Then her application was amended and she added that her guilty plea was involuntary. App. 44, ll. 15 – 23.

She thought she was going to court to plead guilty to assault and battery of a high and aggravated (ABHAN) because her first attorney had given her an indictment for ABHAN but it was not signed. She and her second attorney, plea counsel McFadden, discussed ABHAN and PTI and probation when they first met. She never saw the “amended indictment” for ABWIK. That was why she thought she was pleading to ABHAN. App. 48, ll. 1 – App. 51, ll. 21. She did not want to plead guilty to ABWIK but plea counsel told her she had no choice but to accept the ten year plea offer. App. 52, ll. 19 – App. 53, ll. 18.

On cross examination, when asked if she wanted a trial, Cokley said she wanted a “plea over.” App. 59, ll. 12 – App. 60, ll. 11.

Plea counsel testified that Cokley told him that the two women came to her house at night and came upstairs where she was with her children. The women accused Cokley of taking money from one of the women. Cokely asked them to leave and an altercation followed. The three women went downstairs and the “use of force” occurred just as the women reached the threshold. Cokley told him that the victim then slapped the phone out of Cokley’s hand and that’s when Cokley cut her with the box cutter. App. 62, ll. 1 – App. 63, ll. 5.

Plea counsel’s understanding was that Cokley was arrested for ABWIK, and later indicted for ABHAN. Then the charge was indicted for ABWIK five years later. Counsel said he discussed this with Cokley before her plea. App. 64, ll. 5 – 25. Plea counsel admitted that

Cokley never indicated a desire to plead guilty but she never demanded a trial either. App. 65, ll. 1 – 7. When he inherited the case, the charge was still ABHAN. He did not know why the indictment was “amended” to ABWIK. App. 68, ll. 1 – 24.

The PCR judge ruled that he found Cokley’s testimony to not be credible, and found plea counsel’s testimony to be credible. App. 81- App. 82. The PCR court found that Cokley’s guilty plea was entered freely and voluntarily. App. 81. The PCR court found no evidence that plea counsel was ineffective. App. 82. The judge denied Cokley’s PCR application and dismissed it with prejudice. App. 84. This appeal follows.

## ARGUMENT

The PCR court erred in not finding plea counsel ineffective for not insuring that Petitioner Cokley's guilty plea was voluntarily and knowingly entered when Petitioner Cokley testified that her plea counsel coerced her into taking the state's offer of ten years when the case was five years old.

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).

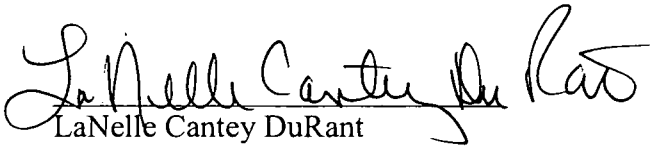
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the

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 in his representation of Cokley. The guilty plea transcript clearly indicated that Petitioner Cokley was hesitant in entering her guilty plea as shown by the frequent pauses where plea counsel had to talk with her. She initially said the facts were not correct but the plea judge did not allow her to explain. She testified at the PCR hearing that she did not want to plead guilty to ABWIK. Her case should be remanded.

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 1st day of November, 2016.

STATE OF SOUTH CAROLINA

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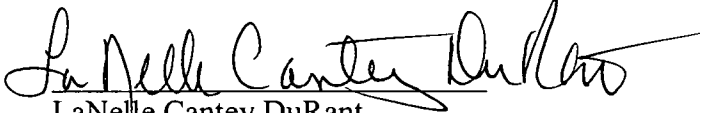
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Lasheda Cokley states:

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 Brooks P. Goldsmith, which was held on March 14, 2016 (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 Lasheda Cokley.

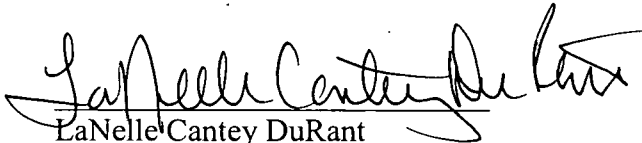
Respectfully Submitted,

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 1st day of November, 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."

  
LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
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ATTORNEY FOR PETITIONER

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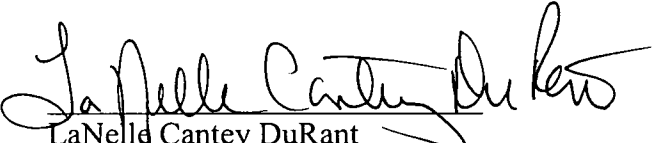
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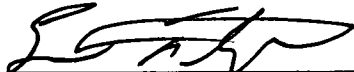
RESPONDENT

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

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 Julie Coleman, 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 Lasheda Cokley, #364399, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 1st day of November, 2016.

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 1st day of November, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.