

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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DEQUAN SHAMAR ANDERSON,

PETITIONER

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MAY 24 2017

V.

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002400

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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(803) 734-1330

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 Anderson's guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate Petitioner's case?

## STATEMENT

On February 15, 2013, Jonathan West was working in his barber shop in Santee when he received a call that the security alarm at his home was sounding. He immediately went to his home which was only about seven minutes away. His friend, Otarius Pelzer, went with him. When they arrived at the house, West went next door briefly to talk to his father to see if he saw anything. Then, the friend Pelzer saw the front door of West's house open, and Petitioner Anderson ran from the home into the woods. App. 8, ll. 16 – App. 9, ll. 9.

West and his friend began chasing Petitioner and claim that Petitioner Anderson had a handgun and began firing warning shots. The men stopped the chase but later saw a woman driving a green Cadillac stop and Petitioner Anderson came from the woods and got into the Cadillac. It was later learned that the female driver was Monique Brightman, the girlfriend of Petitioner Anderson. App. 9, ll. 10 – App. 10, ll. 6.

A few months later, the investigator, Lakeisha Gillard, learned that this incident was similar to another one earlier that involved Monique Brightman who was on probation. When Brightman reported to the Department of Probation for her regular appointment, Petitioner Anderson was with her. Both Anderson and Brightman were arrested after both gave statements implicating themselves in this incident. App. 10, ll. 7 – 22.

On October 21, 2013, the Orangeburg County Grand Jury indicted Petitioner Anderson on the charge of burglary first degree. App. 103-App. 104. On March 10, 2014, the grand jury indicted Anderson on the charge of attempted murder. App. 101-App. 102.

On April 17, 2014, Anderson appeared before the Honorable Clifton B. Newman for a guilty plea. Anderson was represented by Peggy Hinds and Doug Mellard. The state was represented by Tommy Scott. App. 1. Anderson entered a guilty plea to the lesser charges of

burglary second degree non-violent, and to assault and battery of a high and aggravated nature (ABHAN) for a negotiated sentence range of ten to twelve years concurrent. App. 3, ll. 1 – App. 4, ll. 4. Anderson pled guilty to the ABHAN under North Carolina v. Alford.<sup>1</sup>

During the guilty plea, when the judge asked Anderson about his Alford plea, Anderson told the judge that he really did not want to plead guilty to that charge but felt that he was being forced to plead to it in order to get the plea to the non-violent burglary. He admitted that he did the burglary which he said was wrong, but he did not hurt anyone and had not intended to hurt anyone. App. 7, ll. 19 – App. 8, ll. 3.

After the solicitor read the facts, the judge asked Anderson if everything the solicitor said was true. Anderson replied: “No sir.” App. 10, ll. 1 – 25. Anderson explained that the victims had guns and shot at him and he was grazed in the neck. He said that the victims had drugs in their house. He only gave a statement to the ABHAN because at the probation office, law enforcement threatened to “take his kids” who were in the car then unless he gave a statement. That was the only reason he gave a statement about the ABHAN. He admitted that he was guilty of the burglary but he was not guilty of the ABHAN. App. 11, ll. 1 – 24.

The plea judge accepted the negotiated plea offer and sentenced Anderson to ten years each on the burglary second degree and the ABHAN with both to run concurrent. App. 23, ll. 6 – 25.

On September 29, 2014, Anderson filed an application for post-conviction relief (PCR). The state filed a return on August 21, 2015. An evidentiary hearing was held on May 16, 2016 before the Honorable Benjamin H. Culbertson. Anderson was represented by Jonathan D. Waller, and the state was represented by J. Clayton Mitchell, III. App. 53.

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

Petitioner Anderson testified at the PCR hearing that he wanted to “set aside his guilty pleas to ABHAN and to burglary second degree” because his plea counsel was ineffective for not preparing a defense and investigating his statement. App. 56, ll. 13 – 20; App. 68, ll. 1 – 5. Anderson explained that his statement and his fiancée’s statement were the only evidence against him. There was no physical evidence. App. 68, ll. 6 – 22. He told his attorney that his statement was “coerced” because law enforcement told him that they were taking his kids to DSS and lock him and his fiancée up unless Anderson gave them a statement. Anderson then gave a statement. App. 63, ll. 1 – App. 66, ll. 23.

When Anderson told his attorney that he felt “coerced” into giving a statement, his attorney told him that if he took the case to trial, the investigators would just take the stand at pretrial and lie “saying they did not coerce him.” Then the judge would enter the statement into evidence, and the jury would find him guilty. App. 67, ll. 1 – 7.

Anderson did not want to plead guilty to the ABHAN because he said no one was shot. However, it would just be his word against the victims. App. 70, ll. 1 – 23. The only reason he pled guilty to the ABHAN was to get the deal on the burglary second. App. 71, ll. 24 – App. 72, ll. 21. He also pled guilty because his attorney did not “raise a defense” so he felt he had no choice although his “initial plan” was to go to trial. His attorney never did an investigation. App. 72, ll. 1 – 18. If his attorney had investigated and tried to have his statement suppressed, he would have gone to trial. App. 74, ll. 4 – 19.

Plea counsel testified that he advised Anderson to take the plea offer because if he went to trial, it would be on burglary first and attempted murder. The burglary first carried up to a life sentence and counsel did not think they could win the burglary first charge. His fiancée, Ms. Brightman, had given a statement that he came running down the road with a gun that he had

taken from the house. App. 82, ll. 9 – App. 83, ll. 6. Counsel was able to have the charges reduced for much less time. App. 83, ll. 8 – 22.

Counsel also testified that he told Anderson that if he went to trial, there would be a pretrial hearing on the statement. He would “take the stand”, and the officers would take the stand. The judge would then decide who he thought was telling the truth. App. 81, ll. 22 – App. 82, ll. 22.

The PCR judge denied Anderson’s PCR application at the hearing. App. 91, ll. 19 – 25. On November 7, 2016, the PCR judge filed an order denying Anderson’s application and dismissing it with prejudice. App. 94 – App. 100.

The judge found Anderson’s testimony to not be credible, and found plea counsel’s testimony to be “credible and persuasive.” App. 95. The judge found that the record fully supported that Anderson’s guilty plea was voluntary and freely and knowingly entered. The judge wrote that Anderson did not present “any credible evidence to show that he did not plead guilty knowingly, voluntarily and intelligently.” App. 98.

Anderson’s PCR attorney filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Anderson's guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate Petitioner's case.

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).

Failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). Counsel representing a criminal defendant has a duty to conduct a reasonable investigation, which encompasses the defendant’s right to interview potential witnesses against him. State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000).

The PCR court erred in not finding plea counsel ineffective for failing to investigate Petitioner Anderson’s case and trying to develop a defense. Anderson wanted to go to trial on the ABHAN as he maintained his innocence to the end on that charge. It was a violation of his due process right to have him plead guilty to a charge he declared he did not do.

**CONCLUSION**

Based on the above, certiorari should be granted, petitioner's conviction and sentence reversed, and the case remanded.

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is written in a cursive style with a horizontal line underneath the name.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of May, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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DEQUAN SHAMAR ANDERSON,

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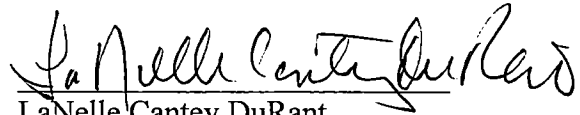
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Dequan Shamar Anderson 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 Judge Benjamin H. Culbertson, which was held on May 16, 2016, 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 Dequan Shamar Anderson.


Respectfully Submitted,

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of May, 2017.

**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  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 24th day of May, 2017.

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DEQUAN SHAMAR ANDERSON,

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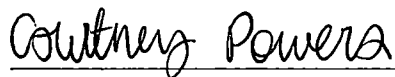
RESPONDENT

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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 Ruston Neely, 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 Dequan Shamar Anderson, #264678, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 24th day of May, 2017.

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 24th day of May, 2017.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027.