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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

DEMETRICE DEONTRE QUATTLEBAUM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002408

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) 734-1330

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 Quattlebaum's guilty plea was entered voluntarily and knowingly because plea counsel did not provide sufficient information to Quattlebaum to enable him to make a proper decision on whether to plead guilty or go to trial?

STATEMENT

On June 21, 2012, Petitioner Quattlebaum borrowed his mother's car in order to give his friend, Rakeem, a ride as Rakeem Brown, had called and asked. When he got to Rakeem's house, Donta Stokes and Deshawn Fordham were there and jumped in the back seat. Then another friend, Jarrell McKnight, called and wanted a ride so Petitioner gave him a ride also. App. 37, ll. 6 - 25. The friends were talking about "needing money" and looking for "someone to rob." App. 9, ll. 1 - 7.

On this same day, Travis Felder and his girlfriend, Kathy Mack, had driven to a store to cash a check. App. 8, ll. 16 - 25. Petitioner Quattlebaum and his friends stopped at this same store and went in to get a drink. According to Quattlebaum, when they returned to the car, Donte Stokes pulled out a gun and pointed out the man, Travis Felder. Quattlebaum and his friends then proceeded to follow Felder and Kathy Mack with Quattlebaum driving. App. 38, ll. 1 - 12.

The friends followed Felder and Kathy Mack for a "significant period of time." Finally, Petitioner Quattlebaum pulled in front of Felder's van and stopped in the middle of the road. Felder had to stop. Then Donte Stokes and DeShawn Fordham left Quattlebaum's car with bandanas covering their faces, and approached Felder's van. Both Stokes and Fordham fired shots into the van. One of the shots struck Kathy Mack in the head killing her. App. 9, ll. 1 - 21.

Felder was able to drive around Quattlebaum's SUV and drove into Santee where he found a police officer. Quattlebaum and his friends had continued to follow Felder, and turned off only after the police officer got a description of the SUV. The officer put out a BOLO. Quattlebaum's SUV was stopped shortly after. Two guns were found hidden in the vehicle. Quattlebaum gave a statement admitting that he was the driver, and "corroborating that the two individuals got out and fired the shots." App. 9, ll. 22 - App. 10, ll. 12.

Petitioner Quattlebaum was originally charged with accessory “for the fact of murder.” On March 13, 2014, Quattlebaum waived presentment to the grand jury. He appeared before the Honorable Edgar W. Dickson, and pled guilty to voluntary manslaughter for a negotiated sentence of thirty years. App. 3, ll. 1 – 8. Quattlebaum was represented by Michael Culler, and the state was represented by Don Sorenson. App.1. The judge accepted the negotiated sentence. App. 15, ll. 18 – 25.

Quattlebaum did not appeal his conviction nor sentence. App. 87.

On March 5, 2015, Quattlebaum filed an application for post-conviction relief (PCR). The state filed a return on December 4, 2015. App. 86. An evidentiary hearing was held on May 16, 2016 before the Honorable Benjamin H. Culbertson. Quattlebaum was represented by Stephanie R. Fajardo, and the state was represented by J. Clayton Mitchell, III. App. 29.

At the PCR hearing, the PCR attorney told the court at the beginning that Petitioner Quattlebaum’s plea counsel was ineffective in his representation of Quattlebaum because the information that he provided to Quattlebaum was not sufficient to enable Quattlebaum to “make a knowing and voluntary decision on whether to plead guilty or to go to trial.” App. 34, ll. 4 – 13. Counsel argued that but for plea counsel’s “deficient performance,” it was likely that Quattlebaum at trial would have been found guilty of a “much lesser sentence.”

Petitioner Quattlebaum testified that his plea counsel told him that he was charged with murder. He learned that he was actually charged with accessory before the fact the day of his guilty plea. He believed that he was charged with accessory because he was the driver of the car. However, he did not know what was going to happen. He was not involved in planning anything. App. 36, ll. 10 – App. 39, ll. 4.

He retained Attorney Culler to handle his case. He told his attorney that he wanted a trial. His attorney told him that “we can beat this at trial” because Quattlebaum had not shot anyone and did not know what was going to happen. App. 39, ll. 5 – 25. However, later, his attorney told him if he went to trial and lost, he would likely get life without parole. That was what led Quattlebaum to plead guilty. App. 40, ll. 1 – 3.

Quattlebaum told his attorney that he would have to explain things to him as Quattlebaum “learned differently.” But his attorney never explained the evidence to Quattlebaum nor his discovery. App. 40, ll. 15 – App. 42, ll. 15. He told his attorney that he had defenses as his co-defendants wrote letters saying that Quattlebaum was not involved. Quattlebaum did not know what happened to those letters. App. 42, ll. 17 – App. 44, ll. 18.

His attorney told him that he could take the thirty years or go to trial and lose and get life without parole. His attorney said: “you go to trial and lose, you ain’t coming home.” So Quattlebaum took the thirty years. App. 46, ll. 1 – 8.

Quattlebaum believed that he could have gotten a lesser plea offer but his attorney said no. His attorney said that he either had to take the thirty years on voluntary manslaughter or go to trial. App. 56, ll. 16 – App. 57, ll. 16.

Sandra Quattlebaum, mother of Petitioner Quattlebaum, testified at the PCR hearing. She retained plea counsel, Attorney Culler, on the advice of her brother because Attorney Culler had represented her brother previously. When she hired Attorney Culler, she did not know that he represented a member of the victim’s family in Petitioner Quattlebaum’s case. If she had known, she probably would not have retained him. App. 59, ll. 5 – App. 61, ll. 25.

She stated that Petitioner Quattlebaum had wanted a different lawyer at that point, but she could not afford another lawyer. App. 62, ll. 1 – 4. She verified that Quattlebaum did learn

differently. She believed that Quattlebaum did not understand what he was doing when he pled guilty. She thought that when a person was told that that he would have to stay in prison the rest of his life, that he would “sign just what they tell you.” App. 62, ll. 22 – App. 63, ll. 16.

Plea counsel testified at the PCR hearing that Petitioner Quattlebaum did not say that he wanted a trial. He explained that Quattlebaum had given a statement that he was going with these guys to “look for money.” Quattlebaum said they were going to rob the Cricket but decided not to because there were children there. They see Felder and decide to follow him because they knew it was payday at American Yard Products, and they saw Felder cash a check. App. 66, ll. 7 – App. 67, ll. 7.

According to counsel, Quattlebaum also put in his statement: “They told me to pull in front of the car; I did; they got out with guns and fired into the car.” App. 67, ll. 10 – 25.

Plea counsel said there were no defenses. App. 72, ll. 1 – 7.

PCR counsel argued in closing that Attorney Culler pushed Petitioner Quattlebaum into pleading guilty by “mischaracterizing” the evidence. Quattlebaum believed that Attorney Culler was not advocating for him. PCR counsel argued that if Quattlebaum had gone to trial on the accessory before the fact charge, he would have had defenses. He was “beaten down” by his attorney. Counsel argued for his guilty plea to be overturned. App. 81, ll. 11 – App. 83, ll. 3.

On November 7, 2016, Judge Culbertson filed an order denying Petitioner Quattlebaum’s PCR application and dismissing it with prejudice. App. 86 – App. 93. As “a matter of general impression,” the judge found Quattlebaum’s testimony to be “not credible” and found plea counsel’s testimony to “be credible and persuasive.” App. 88. The order provided that the PCR court found that Quattlebaum’s guilty plea was entered “freely and voluntarily.” The judge wrote that the plea record showed that Quattlebaum was fully advised that he was pleading to

voluntary manslaughter and that he understood the consequences of pleading guilty. His plea was intelligently made. App. 89 – App. 90.

Petitioner Quattlebaum's 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 Quattlebaum's guilty plea was entered voluntarily and knowingly because plea counsel did not provide sufficient information to Quattlebaum to enable him to make a proper decision on whether to plead guilty or go to trial.

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 not finding plea counsel ineffective for failing to insure that Petitioner Quattlebaum understood the evidence against him and wanted to plead guilty. Quattlebaum explained to his attorney that he learned differently, and needed to have things explained to him. There was no evidence presented that plea counsel took the time to insure that Quattlebaum understood the process and the evidence, and the consequences.

CONCLUSION

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


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of June, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

DEMETRICE DEONTRE QUATTLEBAUM,

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V.

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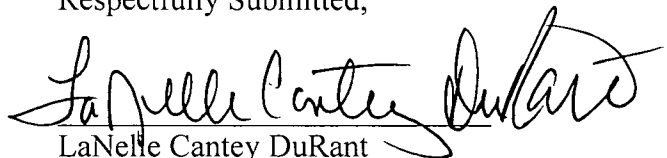
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Demetrice Deontre Quattlebaum 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 Demetrice Deontre Quattlebaum.

Respectfully Submitted,



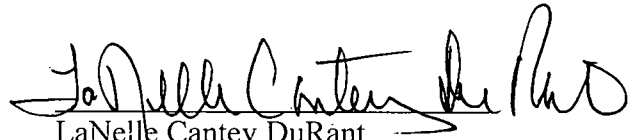
LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of June, 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."



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STATE OF SOUTH CAROLINA

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DEMETRICE DEONTRE QUATTLEBAUM,

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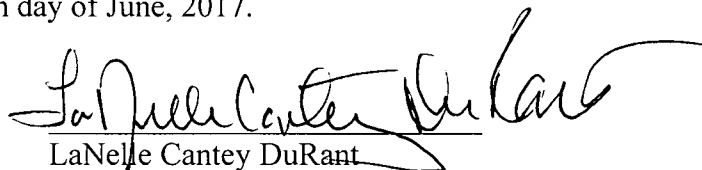
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STATE OF SOUTH CAROLINA,

RESPONDENT

—————
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 Demetrice Deontre Quattlebaum, #359242, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 14th day of June, 2017.



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 14th day of June, 2017.

Courtney Powers (L.S)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.