

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Berkeley County

RECEIVED

Honorable G. Thomas Cooper, Circuit Court Judge

AUG 24 2017

S.C. SUPREME COURT

JAMES DEAN GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000695

JOHNSON PETITION FOR WRIT OF CERTIORARI

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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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 raising the defense of alibi which Petitioner Griffin requested because he worked with his father who was his alibi and not raising the alibi defense was a violation of Petitioner's due process right to a fair trial?

STATEMENT

On July 25, 2011, two men entered the home of George and Robin MacDonald in Berkeley County and took a large amount of jewelry and some weapons. App. 15, ll. 11 – 20. The two men, Patrick Lynch and Derek Miles, then took the stolen goods to Petitioner Griffin who had picked the men up from the scene of the break-in. Petitioner Griffin denied ever entering the home. App. 15, ll. 21 – App. 16, ll. 14.

DNA found on gloves from the scene matched the two co-defendants who were charged with burglary first degree and criminal conspiracy. App. 18, ll. 11 – 23. When he was arrested, Petitioner Griffin gave a statement admitting that he had told the two co-defendants how to commit “some of these crimes.” He also admitted that he had picked them up after they called him and asked him to get them. In addition, he said he helped dispose of the stolen goods. However, he said that he did not know they were going to commit a crime that day or what crime. He denied ever going into the McDonalds’ home. App. 19, ll. 10 – App. 20, ll. 1; App. 21, ll. 12 – 17.

On June 18, 2012, while he was housed at the Berkeley County Detention Center, Petitioner Griffin’s cell was searched based on a tip from another inmate. Inside Griffin’s cell were found two pieces of silver metal, brown copper pipe, and two pieces of razor blades all hidden. Griffin was charged with escape. App. 16, ll. 16 – App. 17, ll. 14.

On June 11, 2013, Petitioner Griffin appeared before the Honorable Stephanie McDonald and entered a guilty plea to burglary first degree, criminal conspiracy, and escape. Griffin was represented by Grover Seaton, and the state was represented by Colleen Dixon. App. 1-2. At the guilty plea, the state pointed out that Petitioner Griffin was charged with burglary first degree under the theory of the “hand of one is the hand of all” even if he had not gone into the home.

The state said there was sufficient evidence to prove that he was involved in the planning of the burglary and was the get away driver. App. 16, ll. 1 – 14.

Defense counsel explained that Griffin had trouble understanding legally how he was charged with burglary when he did not enter the home. Counsel continued that he knew what was going on and did benefit from the incident. App. 18, ll. 10 – App. 19, ll. 25. Griffin told the plea judge that he did pick the co-defendants up and did help dispose of the stolen goods. He said: “I guess that does make me guilty of the hand of one is the hand of all.” App. 21, ll. 12 – 18.

The judge sentenced Griffin to twenty years on the burglary charge, ten years on the escape charge, and five years on the conspiracy with all to run concurrent. App. 24, ll. 17 – 21. Griffin did not appeal his convictions nor sentences. App. 85.

On May 7, 2014, Petitioner Griffin filed an application for post-conviction relief (PCR). The state filed a return on October 26, 2015. An evidentiary hearing was held on December 9, 2016 before the Honorable G. Thomas Cooper. App. 44. Griffin was represented by Rodney Duane Davis, and the state was represented by Ruston W. Neely. App. 44.

Griffin testified at the PCR hearing that he did not do the burglary as he was nowhere near the house when the crime was committed. He admitted that he took the “people” to the pawn shop to sell the goods. App. 52, ll. 1 – App. 53, ll. 21. He was going to trial and the jury had already been selected. One of his co-defendants, Patrick Lynch, had written statements in the beginning explaining that Griffin had nothing to do with this case. Then just before trial, Griffin learned that Lynch was going to testify for the state against Griffin. Then his attorney told him he could not win the case and he should plead guilty. App. 54, ll. 1 – App. 57, ll. 25.

Griffin had told his attorney in preparation for trial, that he had an alibi defense. Griffin had been working with his father doing repair work at Dr. John Corolla's house the entire morning. But his attorney did not file an alibi defense with the court and the solicitor's office for trial. Griffin felt that his attorney was not prepared to defend him at trial as his attorney told him he could not win. Griffin would have gone to trial if his attorney had contacted his alibi witnesses. Griffin felt that he had no options. App. 58, ll. 1 – App. 59, ll. 24.

Griffin's trial counsel, Grover Seaton, testified that this was going to be a trial until the last minute. They had picked a jury. Then defense counsel learned at the Jackson v. Denno, hearing that Griffin had confessed that he picked the co-defendants up and made other admissions. Counsel also testified that Griffin had fourteen prior burglary second convictions so he could not put him on the stand. Then his alibi witness, Griffin's father, could not say that Griffin was with him during the full time of the incident. The final obstacle was when counsel learned that co-defendant was going to cooperate with the state and testify against Griffin. App. 65, ll. 1 – App. 67, ll. 25. Counsel said that he did not review the video tape of Petitioner Griffin's "discussion" with the police. App. 72, ll. 1 - 15.

The PCR judge found plea counsel's testimony to be credible while he found Petitioner Griffin's testimony lacking in credibility. App. 87. The judge wrote that as an initial matter, the PCR court found that the record "fully supported the knowing and voluntary nature of Griffin's guilty plea." App. 87. The judge construed Griffin's claim of due process violation as an allegation of "general ineffectiveness" of counsel. This included counsel's failure to raise the alibi defense. The judge wrote that Petitioner Griffin failed to prove that he was prejudiced by counsel not raising the alibi defense Griffin wanted. Counsel had testified that the proposed alibi

did not cover the time period when the burglary occurred. The judge held that Griffin waived any defenses when he pleaded guilty. App. 88 – App. 89.

The PCR judge found that Griffin failed to prove ineffective assistance of counsel by plea counsel. App. 89. The judge denied Petitioner Griffin's PCR application and dismissed it with prejudice. App. 90.

Petitioner filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in not finding plea counsel ineffective for not raising the defense of alibi which Petitioner Griffin requested because he worked with his father who was his alibi and not raising the alibi defense was a violation of Petitioner's due process right to a fair 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).

Failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007).

In Jones v. Barnes, 463 U.S. 745 (1983), the United States Supreme Court held that the defendant has the authority to make certain fundamental decisions about his case after thorough consultation and advisement with counsel.

The PCR court erred in not finding plea counsel ineffective for not following Petitioner Griffin’s request to go to trial with an alibi defense. Griffin was prejudiced by counsel’s ineffectiveness because he was only guilty through association or the hand of one is the hand of all. There was no evidence that he entered the home so there was a strong probability that the jury would not have found him guilty of burglary. The longest sentence he received was for burglary.

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, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L".

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of August, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable G. Thomas Cooper, Circuit Court Judge

JAMES DEAN GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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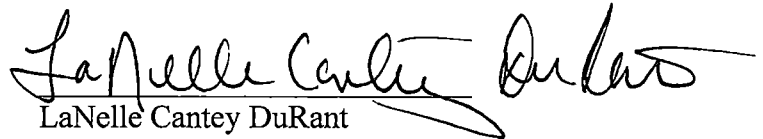
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Dean Griffin 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 G. Thomas Cooper, which was held on December 9, 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 James Dean Griffin.

Respectfully Submitted,

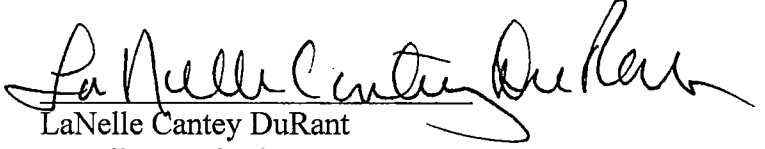


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 24th day of August, 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
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ATTORNEY FOR PETITIONER

This 24th day of August, 2017.

STATE OF SOUTH CAROLINA

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JAMES DEAN GRIFFIN,

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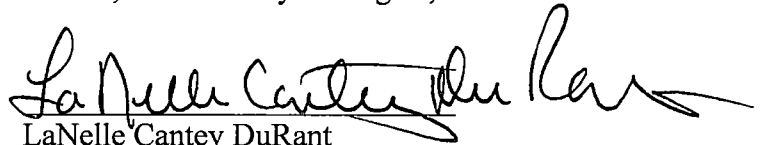
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STATE OF SOUTH CAROLINA,

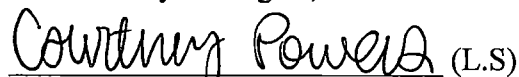
RESPONDENT

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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 Judah VanSyckel, 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 James Dean Griffin, #231859, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 24th day of August, 2017.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

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

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