

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 ORIGINAL

Certiorari to Cherokee County

Honorable Robin B. Stilwell, Circuit Court Judge

RECEIVED

FEB 06 2018

JOSEPH DANTE SATTERWHITE,

PETITIONER

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001288

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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The PCR court erred in not finding trial counsel ineffective for failing to conduct a proper and sufficient investigation which was prejudicial to Petitioner Satterwhite because trial counsel was not aware of the psychiatric medications Petitioner had been taking; and did not have a copy of the x-ray of victim’s skull which indicated the bullet path which was the basis for murder charge when Petitioner said it was accident.7

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ISSUE PRESENTED

Did the PCR court err in not finding trial counsel ineffective for failing to conduct a proper and sufficient investigation which was prejudicial to Petitioner Satterwhite because trial counsel was not aware of the psychiatric medications Petitioner had been taking; and did not have a copy of the x-ray of victim's skull which indicated the bullet path which was the basis for murder charge when Petitioner said it was accident?

STATEMENT

As of March 14, 2012, Petitioner Satterwhite and Allene Ellis had lived together almost three years. On March 14, 2012, Satterwhite and Allene began a verbal altercation because of accusations “going around” that Satterwhite’s father and Allene were involved in a romantic relationship. App. 184, ll. 1 – 25; App. 302, ll. 3 – 25.

The state’s version of events was that on March 14, 2012, Allene became very scared of Satterwhite due to the events of that day and called his family to come over and check the house when Allene came home from picking up her daughter from work. Satterwhite’s parents checked the house as did Allene’s daughter, Yasmine. However, no one checked one of the closets. After everyone left, Allene proceeded to enter the house via of the front door. As she approached the door, Petitioner Satterwhite appeared and shot her in the back of the head with a .38 caliber gun. Allene died at the scene. App. 86, ll. 16 – App. 89, ll. 25.

Satterwhite disappeared and was arrested shortly after in Greensboro, North Carolina. While he was incarcerated there, he was treated for depression and “mental issues.” He was given the medications Valium, Haldol, and Cogentin. The psychiatrist told him that he suffered from schizophrenia and bi-polar disorders. This was the first time he had been diagnosed with these disorders. According to Satterwhite these medications changed his personality and his moods. App. 294, ll. 3 – App. 295, ll. 23.

Satterwhite was transported to Cherokee County, South Carolina after about two months in North Carolina. He did not see a mental health professional in South Carolina. App. 295, ll. 24 – App. 296, ll. 25. Satterwhite gave a statement to police in Cherokee while he was taking the medications. App. 297, ll. 13 – 24.

On July 19, 2012, the Cherokee County Grand Jury indicted Petitioner Satterwhite for murder and possession of a firearm during the commission of a violent crime. App. 359 – App. 360. On May 6, 2013, Satterwhite appeared before the Honorable J. Derham Cole intending to enter a guilty plea for the state’s recommendation that a life sentence not be given. App. 1 – 3. Satterwhite was represented by Don A. Thompson, and the state was represented by Barry Joe Barnette and Prina Chandrakant Tailor. App. 1. During the plea hearing, Satterwhite told the judge that he did not want to plead guilty as he did not willfully nor maliciously kill Allene Ellis. He said he did not have the intent to kill her. Satterwhite decided to have a jury trial. App. 6, ll. 21 – App. 10, ll. 15.

On May 14 – 15, 2013, Satterwhite proceeded to trial before the Honorable J. Derham Cole and a jury. Satterwhite was again represented by Don Thompson, and the state was represented by Barry Barnette. App. 12. Satterwhite testified during the trial that the shooting of Allene was an accident. He testified that they were having an argument during that day. He was also arguing with his father because Satterwhite believed there was something going on between his girlfriend, Allene, and his father. His father’s birthday was two days before this incident and Allene did not want to go to the birthday celebration. This made Satterwhite believe there was something between his girlfriend and his father. App. 190, ll. 3 – App. 197, ll. 24.

Satterwhite testified that all of them finally were at the house that evening where Satterwhite and Allene lived on March 14, 2012. Satterwhite saw the gun on the bedpost and grabbed it. He hoped to scare them into telling the truth. He shot the first time into the floor and asked which one of them was lying. He shot the second time again into the floor and Allene got really scared. Allene moved forward and fell against a chair just as Satterwhite fired the third

shot. The third shot hit Allene, and she died. Satterwhite claimed that he loved Allene and never in his right mind would have killed her. App. 197, ll. 22 – App. 201, ll. 25.

The forensic pathologist, Dr. Janice Ross, testified that she performed the autopsy on Allene Ellis' body. Because of the gunshot wound to the head, she did an x-ray of the head to “identify any bullets still inside the head.” App. 128, ll. 13 – App. 129, ll. 25. The x-ray indicated that the bullet went “straight into” the back of the head just right of the midline.” It lodged in her brain. App. 130, ll. 1 – App. 131, ll. 24; App. 14 – App. 134, ll. 15.

The jury found Satterwhite guilty as indicted on both charges. App. 269, ll. 1 – 18. The judge sentenced Satterwhite to life in prison on the murder charge and five years on the firearm charge. App. 274, ll. 1 – 9. Satterwhite's attorney filed a notice of appeal. The appeal was perfected with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed Petitioner Satterwhite's appeal. State v. Satterwhite, 2014-UP-378 (Ct. App. filed November 5, 2014).

On October 30, 2015, Satterwhite filed an application for post-conviction relief (PCR). The state filed a return on July 1, 2016. An evidentiary hearing was held on March 24, 2017 before the Honorable Robin B. Stilwell. Satterwhite was represented by Steven D. Epps, and the state was represented by Valerie G. Giovanoli. App. 290.

Satterwhite testified at the PCR hearing that his trial attorney was ineffective because he did no investigation of his own of the case. App. 313, ll. 6 – App. 314, ll. 3. He told his attorney at his preliminary hearing that he had been on medication. He told his attorney that he was on these medications when he gave his statement to police in Cherokee. App. 297, ll. 1 – 24. He was not aware if his attorney obtained his medical records. Satterwhite never met with a

psychiatrist nor mental health professional who could testify about his mental condition. App. 297, ll. 25 – App. 298, ll.23.

Satterwhite did not know anything about the autopsy prior to trial. Satterwhite did not see the x-ray of Allene’s head until the trial when he saw it during testimony. He believed that the x-ray would corroborate his version that Allene tripped at the time he fired the gun so the bullet entered her head as she was going down when she tripped. App. 306, ll. 1 – App. 307, ll. 18. His attorney did not ask any questions about the trajectory of the bullet during the crime scene investigator’s testimony. App. 310, ll. 1 – 25.

Trial counsel testified during the PCR hearing that he never saw a need for Satterwhite to have a mental evaluation. Counsel was not aware of any mental issues that Satterwhite had. He believed that Petitioner understood what counsel told him. Counsel testified that when he asked Satterwhite about medication, Satterwhite told counsel he was not on any medication. App. 328, ll. 19 – App. 329, ll. 24. Counsel stated that Satterwhite did not tell him that he was on medication when he gave his statement to police. App. 335, ll. 5 – 7.

Trial counsel did not know about Satterwhite having an altercation with his father the day of the incident until Satterwhite’s testimony at trial. App. 334, ll. 22 – App. 335, ll. 7.

Counsel did not have the x-ray in his possession and did not remember having a copy of the medical examiner’s report. App. 330, ll. 11 – 25. Counsel admitted that during trial the solicitor asked the medical examiner about the results of the x-ray, but counsel did not cross examine about the x-ray although he did not have a copy in his file. App. 337, ll. 7 – App. 339, ll.

On April 19, 2017, the PCR judge issued an order denying Petitioner Satterwhite’s PCR application and dismissing it with prejudice. App. 345 – App. 353. The judge found as a matter

of “general impression” that the testimony of trial counsel was credible and the testimony of Satterwhite was not credible. App. 347. The judge found that Satterwhite did not meet his burden of proving that trial counsel was ineffective for not investigating Satterwhite’s case sufficiently. The judge wrote that trial counsel testified that he had no difficulty communicating with Petitioner nor was there any indication that Petitioner Satterwhite needed a mental evaluation. App. 348 – App. 349.

The PCR judge found that the medical examiner’s report was consistent with the state’s theory that the bullet entered the deceased at a straight, horizontal angle. The judge found that trial counsel performed an effective cross-examination of the medical examiner about the x-ray and the angle of the bullet considering the evidence against Petitioner Satterwhite. App. 350 – App. 351.

PCR counsel filed a notice of appeal. This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred in not finding trial counsel ineffective for failing to conduct a proper and sufficient investigation which was prejudicial to Petitioner Satterwhite because trial counsel was not aware of the psychiatric medications Petitioner had been taking; and did not have a copy of the x-ray of victim's skull which indicated the bullet path which was the basis for murder charge when Petitioner said it was accident.

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).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of the claim of ineffective assistance of counsel, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the 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*; Butler v. State, *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 a probability 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.

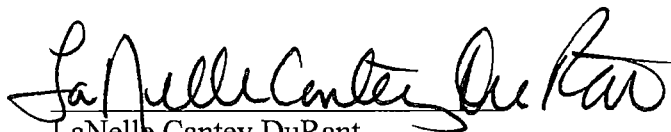
The PCR court erred in not finding trial counsel ineffective for not investigating the mental health of Petitioner Satterwhite. Just the circumstances of the incident itself where Satterwhite allegedly murdered the girlfriend that he said he loved should have prompted trial counsel to have Satterwhite evaluated for any mental issues.

Trial counsel was also ineffective for not investigating the autopsy and the angle of the bullet considering Satterwhite's version of events. Trial counsel needed to have sought the opinion of an independent expert about the bullet's trajectory.

Petitioner Satterwhite needs a new trial where all of the issues have been sufficiently investigated as he is serving a life sentence.

CONCLUSION

Based on the above, certiorari should be granted; Petitioner Satterwhite's convictions and sentences reversed and the case remanded for a new trial.

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is written in a cursive style with a large, sweeping flourish at the end.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of February, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Robin B. Stilwell, Circuit Court Judge

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V.

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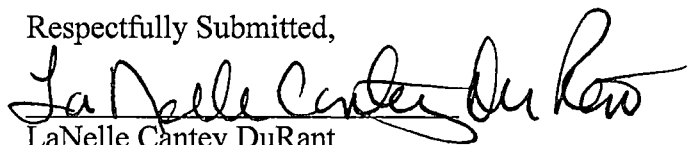
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Dante Satterwhite states:

1. She is 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 Robin B. Stilwell, which was held on March 24, 2017, 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 Joseph Dante Satterwhite.

Respectfully Submitted,



LaNelle Cantey DuRant

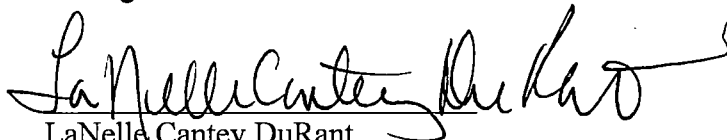
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of February, 2018.

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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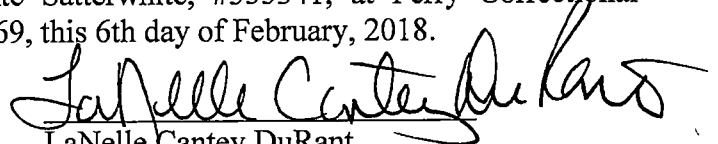
v.

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 Valerie Garcia Giovanoli, 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 Joseph Dante Satterwhite, #355341, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 6th day of February, 2018.



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.