

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Jean H. Toal, Circuit Court Judge

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BRANDON BANNISTER,

V.

STATE OF SOUTH CAROLINA,

ORIGINAL  
RECEIVED  
JUL 23 2018  
S.C. SUPREME COURT  
PETITIONER

RESPONDENT

APPELLATE CASE NO 2017-002367

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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 Bannister's guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate possible defenses?

## STATEMENT

On March 11, 2011, Ms. Hardee was awakened from her deep sleep in her home by an unknown man who had a T-shirt covering his face and wearing Latex gloves. The man got into bed with her and tried to sexually assault her. They struggled so he achieved only digital penetration. App. 12, ll. 14 – App. 13, ll. 11.

Ms. Hardee finally got away from the man and got to her telephone. When she did, the man ran from the house. Ms. Hardee then called the police. When the police checked the home, in the bedroom they found the man's Walmart card which was thought to have been used to open a window for entry. A blue Latex glove was found outside the apartment. When the police ran the name of Brandon Bannister from the card, they learned that the man was out on bond on a previous charge. The bonding company provided Bannister's location as he was wearing a GPS monitor. App. 13, ll. 12 – App. 14, ll. 15.

When Bannister was arrested, he provided two statements including a written statement admitting his guilt for the incident. He wrote a letter of apology to Ms. Hardee. App. 14, ll. 16 – App. 15, ll. 18.

On April 11, 2012, the Berkeley County Grand Jury indicted Bannister on the charges of burglary first degree and criminal sexual conduct (CSC) first degree. App. 85 – App. 91. On May 20, 2013, Bannister appeared before the Honorable J.C. Nicholson, Jr. and entered a guilty plea to the charges as indicted. Bannister was represented by Keisha White, and the state was represented by Anne Williams. App. 1. The judge sentenced Bannister to twenty-five years on each charge with the sentences running concurrent. App. 29, ll. 16 – 24.

Bannister did not appeal his conviction nor sentence. App. 76.

On May 19, 2014, Petitioner Bannister filed an application for post-conviction relief (PCR). The state filed a return on September 3, 2015. App. 75. An evidentiary hearing was held on September 16, 2016 before the Honorable Jean Toal. Petitioner Bannister was represented by Lance S. Boozer, and the state was represented by J. Rutledge Johnson. App. 46.

Petitioner Bannister testified at the PCR hearing that his plea was involuntary. He had tried to have his attorney relieved because she did not provide any defense strategy. App. 51, ll. 1- 19. He did not go to trial because he felt that his attorney was not prepared. He did not have a defense. He believed that his attorney did not want his case. App. 53, ll. 1- App. 55, ll. 25.

Plea counsel testified at the PCR hearing that Petitioner Bannister had “always indicated that he did not want a trial.” Counsel said that she had discussed possible defenses with Petitioner but he wanted a plea bargain. The only issue was how much time he wanted. App. 65, ll. 1- App. 66, ll. 21. Counsel testified that she felt that a plea would be in Bannister’s best interest. App. 67, ll. 6 – 8. Plea counsel stated that Bannister provided two confessions to the police while he was in the detention center. He also wrote a letter of apology to the victim. App. 70, ll. 1 – 11.

The PCR judge denied Bannister’s PCR application on the record at the end of testimony. App. 72, ll. 1 – 6.

On May 9, 2017, the PCR judge filed an order denying Bannister’s PCR application. App. 75 – App. 84. The PCR judge found Petitioner Bannister’s testimony regarding plea counsel’s ineffectiveness not credible, but found counsel’s testimony to be credible. App. 80. The judge found that Bannister’s claim that his guilty plea was not voluntary to be without merit. The judge ruled that the record “fully supports the knowing and voluntary nature of Applicant’s plea.” App. 82 – App. 83. PCR counsel 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 Bannister's guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate possible defenses.

A criminal defendant is entitled to effective representation at trial and on direct appeal. Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052(1984). In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) the deficient performance must have prejudiced the applicant's case. Id., Gallman v. State, 307 S.C. 273, 414 S.E.2d 780 (1992).

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).

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 (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. 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, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with 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).


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.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court reversed the PCR court and remanded Lounds' case because his defense counsel was ineffective for failing to adequately prepare for trial so as to be able to call key witnesses. Counsel failed to make an independent investigation of the facts and circumstances.

Plea counsel was ineffective for not investigating possible defenses and developing a defense strategy. Bannister was prejudiced by counsel's failure to consider defense because she believed a plea was best because he had confessed. There was no indication that she considered a mental evaluation which may have been warranted because he committed this assault while wearing a GPS monitor and was being tracked.

**CONCLUSION**

Based on the above, certiorari should be granted, and petitioner's sentences and convictions should be reversed, and his 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 long horizontal flourish extending to the right.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of July, 2018.

STATE OF SOUTH CAROLINA

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RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Brandon Bannister states:

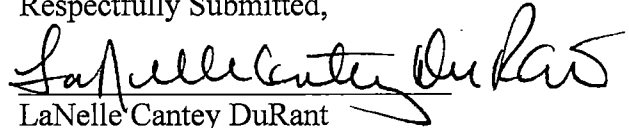
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Jean H. Toal, which was held on September 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 Brandon Bannister.

Respectfully Submitted,



LaNelle Cantey DuRant

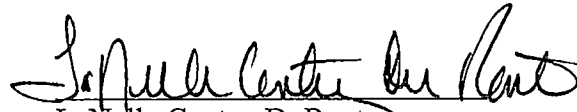
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of July, 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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Defense  
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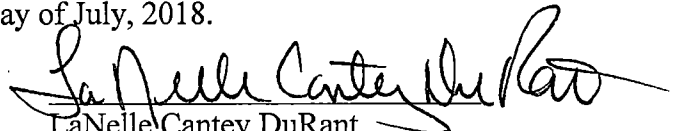
RESPONDENT

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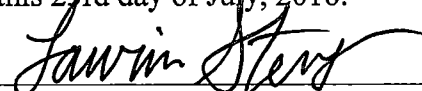
CERTIFICATE OF SERVICE

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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 Megan Harrigan Jameson, 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 Brandon Bannister, #355440, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of July, 2018.

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 23rd day of July, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.