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SC SUPREME COURT
ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable R. Scott Sprouse, Circuit Court Judge

DAVID SCOTT MOONEY

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000052

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 failing to obtain a copy of the drug analysis conducted by SLED to present to Petitioner Mooney as Petitioner said that no active drugs were obtained by the search warrant as the substances obtained were months old?

STATEMENT

Petitioner Mooney and his wife, Michelle, were staying with Mooney's father in Greenwood in January 2015. App. 69, ll. 21 – App. 70, ll. 15; App. 5, ll. 3 – 8. On January 13, 2015, agents with the Greenwood County Drug Enforcement Unit executed a search warrant on that home where Mooney was living. Mooney was found in a compartment in a bedroom. App. 5, ll. 3 – 10.

A search of the property found seven bottles at different places with a total combined weight of 1604 grams of methamphetamine. App. 5, ll. 10 – App. 7, ll. 11. Petitioner Mooney, his wife, and his father were arrested and charged with trafficking methamphetamine. App. 101.

On May 8, 2015, the Greenwood County Grand Jury indicted Petitioner Mooney on the charge of trafficking methamphetamine over 400 grams. App. 99-App. 100. On August 13, 2015 Petitioner Mooney appeared before the Honorable Frank R. Addy, Jr. and entered a guilty plea to the lesser included charge of manufacturing methamphetamine. Mooney was represented by Thomas Adducci, and the state was represented by Brian Moroney. App. 1 – App. 4, ll. 13.

During the plea, when the solicitor read the amount of drugs, the judge clarified that it was his understanding that “this was not the finished product but was sludge.” The solicitor said that was correct. The solicitor did not present a drug analysis report to the court. App. 7, ll. 1 – 6. The judge sentenced Mooney to twelve years and recommended the addictions treatment unit for Mooney. App. 19, ll. 1 – 15.

On September 22, 2015, Mooney filed a *pro se* motion to reconsider sentencing. App. 21-App. 22. The plea judge issued an order denying the motion for reconsideration of sentence imposed. App. 23. Petitioner Mooney did not file an appeal of his conviction nor sentence. App. 89.

On November 1, 2016, Mooney filed an application for post-conviction relief (PCR). App. 24 – App. 33. The state filed a return on February 16, 2017. App. 50 – App. 53. Mooney filed an amended post-conviction relief application on September 13, 2017. App. 35 – App. 37. An evidentiary hearing was held on October 11, 2017 before the Honorable R. Scott Sprouse. Petitioner Mooney was represented by Ashley A. McMahan, and the state was represented by Justin Hunter. App. 55.

Petitioner Mooney testified at the PCR hearing that his biggest issue was that the solicitor made it appear to Judge Addy that “everything” found at Mooney’s house was an ongoing active cook. However, everything they found was mostly months old. The solicitor made it appear that Mooney had a “mass operation” and was selling drugs. But it was all for his personal use. App. 58, ll. 20 -App. 60, ll. 25. Mooney never saw a drug analysis although he asked for one. App. 62, ll. 2-14. At the guilty plea, his attorney did not say that they did not have a SLED drug analysis. Mooney maintained that he disagreed with what the state said the drugs were at his house. App. 64, ll. 8 – App. 65, ll. 9. Mooney testified that the reason he pled guilty was to have the charges against his father dropped because his father had nothing to do with the drugs. He was not a drug user. Most of the drugs belonged to Mooney’s wife. App. 63, ll. 1 – 17.

Plea counsel testified at the PCR hearing that he did not remember if he showed the search warrant to Mooney but he saw no problems with it. App. 71, ll. 4-17. Counsel said that the state “claimed” that 600 plus grams of methamphetamine were found in bottles in a shed behind the house. App. 70, ll. 1 – 6.

Counsel said on cross-examination that he disagreed with the weights in Mooney’s case, because the state was charging Mooney with the sludge basically. App. 76, ll. 14 – App. 77, ll. 6. Counsel said that the state weighed the sludge that was used for the manufacturing of

methamphetamine in order to get the drug weight to the trafficking weight. Counsel disagreed with that process. App. 74, ll. 18 – App. 75, ll. 17. Counsel explained that a weight was required for a trafficking charge but manufacturing methamphetamine did not require a weight. App. 75, ll. 18 – 24.

The PCR judge issued an order on November 21, 2017 denying Mooney’s PCR application and dismissing it with prejudice. App. 88 – App. 98. The judge found that Petitioner Mooney failed to prove that counsel’s performance was deficient. App. 93. The judge wrote that Mooney failed to show that he was prejudiced by counsel’s actions as the amount of drugs had no bearing on whether he was guilty of manufacturing. The judge wrote that the manufacturing methamphetamine statute only “criminalizes the action and does not consider any weight of drugs.” App. 93.

Mooney’s PCR counsel filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in not finding plea counsel ineffective for failing to obtain a copy of the drug analysis conducted by SLED to present to Petitioner Mooney as Petitioner said that no active drugs were obtained by the search warrant as the substances obtained were months old.

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). 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.

Plea counsel was ineffective for not investigating the SLED drug analysis and for not informing the court that Mooney did not have a copy of the drug analysis. Counsel was ineffective for not requiring the state to produce the drug analysis to the court. The judge had to ask the solicitor if the amount was the finished product or only sludge. App. 7, ll. 1 – 6.

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, reading "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 6th day of August, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable R. Scott Sprouse, Circuit Court Judge

DAVID SCOTT MOONEY

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

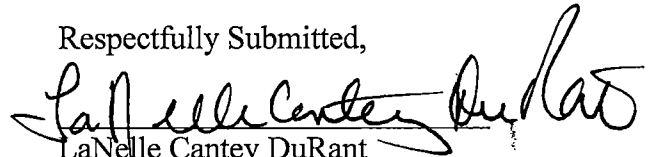
PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Scott Mooney 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 R. Scott Sprouse, which was held on October 11, 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 David Scott Mooney.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

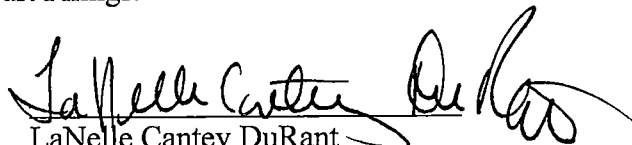
ATTORNEY FOR PETITIONER

This 6th day of August, 2018.

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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
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South Carolina Commission on Indigent
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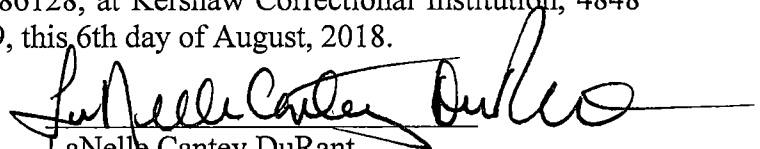
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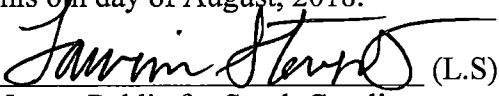
RESPONDENT

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 Janell Gregory, 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 David Scott Mooney, #186128, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 6th day of August, 2018.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

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

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