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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Barnwell County

Honorable R. Scott Sprouse, Circuit Court Judge  
\_\_\_\_\_

BILL BREELAND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001417  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent Defense  
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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 Breeland's guilty plea was entered voluntarily and knowingly because Petitioner only pled guilty because his trial counsel failed to prepare his case for trial?

## STATEMENT

Petitioner Breeland and Katrina Breeland were married and had two boys. However, problems developed as Petitioner Breeland had mental health issues. He had been diagnosed with paranoid schizophrenia and depression. App. 15, ll. 6 – App. 16, ll. 9. Katrina had left and was living with her parents. App. 9, ll. 24 – App. 10, ll. 2.

On January 5, 2014, Katrina was leaving her parents' home to go to school as she rode the Local Motion bus. As she walked outside, Petitioner came around a bush with a knife and proceeded to stab Katrina. He stabbed her three times in the chest and one time in one eye. App. 10, ll. 3 – 14; App. 59, ll. 1 – 14. Katrina's father came out and chased Petitioner away. App. 10, ll. 20 – 21. Katrina was in critical condition but did survive. However, she did lose one eye. App. 10, ll. 15 – 17.

There was a video from the bus showing the incident as well as seven eyewitnesses including the people on the bus. When he was arrested, Petitioner Breeland gave statements to the police that he had done the crime. App. 60, ll. 16 – App. 61, ll. 5; App. 10, ll. 18 – 22.

On May 26, 2014, the Barnwell County Grand jury indicted Petitioner Breeland on the charge of attempted murder. App. 75- App. 76. On May 27, 2014, Petitioner Breeland appeared before the Honorable Edgar W. Dickson and entered a guilty plea to attempted murder as indicted. Breeland was represented by Laura A. McCann, and the state was represented by Susanna M. Ringler. App. 1 – 3, ll. 25.

During the guilty plea, Breeland told the judge that he had mental health issues and took medication for schizophrenia and depression. When asked by the judge if the medication affected his ability to understand, Breeland initially said yes. Then after conferring with his attorney,

Breeland changed that to say no, that the medicine did not affect his understanding. App. 7, ll. 1 – App. 8, ll. 10.

During mitigation, plea counsel told the court that Breeland found out that his wife was having an affair which “infuriated” him. When he confronted her about it, the wife made “taunting” remarks to him such as “what does it matter, you are going to prison anyway.” These taunting comments made him extremely angry. App. 16, ll. 10 – App. 17, ll. 20.

Breeland then told the court that his wife “talked to him like he did not even exist, and treated him like a nobody.” He said: “She broke me down to my heart; she broke me in my heart.” App. 19, ll. 19 – 25.

The judge sentenced Breeland to twenty years’ incarceration. While incarcerated, he was to obtain his GED; and comply with mental health treatment. App. 21, ll. 15 – 25.

Breeland’s plea counsel filed a notice of appeal. The Division of Appellate Defense perfected the appeal with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed Petitioner’s appeal on August 12, 2015. State v. Breeland, Op, No. 2015-UP-419 (Ct. App. filed august 12, 2015).

On July 22, 2016, Petitioner Breeland filed an application for post-conviction relief (PCR). The state filed a return on January 24, 2017. App. 67. An evidentiary hearing was held on May 7, 2018 before the Honorable R. Scott Sprouse. Breeland was represented by Lance Boozer, and the state was represented by Julie Coleman. App. 43.

Petitioner Breeland testified at the PCR hearing that his plea counsel was ineffective because she did not explain to him any defenses nor any trial strategy. She had made no trial preparations. It took Breeland a long time to trust his plea counsel. App. 51, ll. 23 – App. 53, ll. 23. Plea counsel told him at the last minute that they were going to trial and Breeland knew they

were not prepared. That was the reason he decided to plead guilty. If he had had more time, he would have taken the jury trial. App. 53, ll. 24 – App. 54, ll. 25. Breeland said he wanted a new trial. App. 55, ll. 1 – 19.

Plea counsel testified that she did not discuss any possible defenses with Petitioner Breeland because he never wanted a trial. He had always said that he was guilty from the very beginning. She said that the evidence was overwhelming which included the seven witnesses and the video from the bus. App. 60, ll. 6 – App. 61, ll. 5. Counsel said that she agreed with Breeland's decision to plead guilty. App. 63, ll. 1 – 7.

On cross-examination, counsel admitted that they never made any trial preparations because Breeland was “very, very clear he did not want a trial.” App. 64, ll. 5 – 23.

On June 14, 2018, the PCR judge issued an order denying Breeland's PCR application and dismissing it with prejudice. App. 67 – App. 74. The judge found Breeland's testimony that he was coerced into pleading guilty because his plea counsel failed to prepare his case for trial to be not credible. App. 73. The judge found that Petitioner Breeland's guilty plea was entered freely and voluntarily, and that Breeland failed to prove that plea counsel was deficient. App. 72.

## ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Breeland's guilty plea was entered voluntarily and knowingly because Petitioner only pled guilty because his trial counsel failed to prepare his case for trial.

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).

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).

Plea counsel was ineffective for not preparing for trial by discussing possible defenses with Petitioner Breeland. If she had, Breeland likely would not have pled guilty and there was a reasonable probability that the outcome of his case would have been different. He had a history of mental health issues to which some jurors would likely have been sympathetic.

The PCR court erred by not finding plea counsel ineffective for her not at least discussing a trial possibility with Breeland.

**CONCLUSION**

Based on the above, certiorari should be granted, and petitioner's sentences and convictions should be reversed, and his case remanded.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of February, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Barnwell County

Honorable R. Scott Sprouse, Circuit Court Judge

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BILL BREELAND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Bill Breeland states:

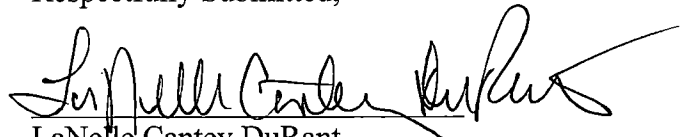
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge R. Scott Sprouse, which was held on May 7, 2018, 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 Bill Breeland.

Respectfully Submitted,

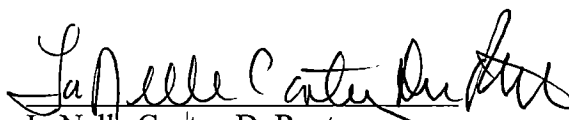


LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 19th day of February, 2019.

**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

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Defense  
Division of Appellate Defense  
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This 19th day of February, 2019.

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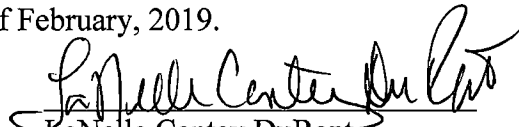
RESPONDENT

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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 Bill Breeland, #315919, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 19th day of February, 2019.

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 19th day of February, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: September 27, 2028.