

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Beaufort County

RECEIVED

Honorable Diane Schafer Goodstein, Circuit Court Judge APR 19 2019

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MICHAEL E. HAWKINS,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001547

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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LaNelle Cantey DuRant  
Appellate Defender

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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 informing Petitioner Hawkins that he could get more prison time than his co-defendants which was prejudicial to Petitioner because he testified that he would have gone to trial instead of pleading guilty if he had known that fact?

## STATEMENT

On March 19, 2012, around 3:30 or 4:00, Petitioner Hawkins along with three co-defendants, allegedly entered the home of Loretta and Laron Jackson on St. Helena Island in Beaufort County. The four men wore bandanas to hide their identity. The men bound both Laron and Loretta Jackson with duct tape. The men then began taking items from the home. App. 16, ll. 4 – 17.

Laron Jackson was able to get free. He then jumped from the second floor and went for help. When law enforcement arrived, the four men had fled in a van that Petitioner Hawkins had borrowed from a girlfriend. Co-defendant Mack was driving. App. 16, ll. 20 – App. 17, ll. 5.

The men in the van led the police on a long and speedy chase. During the chase, an AK-47 weapon was thrown from the vehicle. Ultimately, the car was stopped by the police.

Allegedly, Petitioner Hawkins was one of two people who fled from the van when it was stopped. Petitioner Hawkins was found in the lobby of a nearby “elder care facility.” Hawkins told the police that he had gotten a ride with a friend. They got into an argument and Hawkins got out and was walking to Beaufort. App. 17, ll. 6 – App. 18, l. 16.

On April 19, 2012, the Beaufort County Grand Jury indicted Petitioner Hawkins on the charges of burglary first degree, two counts of kidnapping, assault and battery of a high and aggravated nature (ABHAN), criminal conspiracy, armed robbery (AR), and possession of a weapon during a crime of violence. App. 110 – App. 123. On April 18, 2013, Petitioner Hawkins appeared before the Honorable Carmen T. Mullen and entered a guilty plea to the six charges as indicted pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). App. 5, ll. 1 – 25. Hawkins was represented by Christopher W. Lempsis, Jr. and the state was represented by Mary Concannon. App. 1.

During the plea, plea counsel told the court that Petitioner Hawkins had always ‘maintained his innocence’ but felt there was sufficient evidence to support his conviction. App. 21, ll. 1 – 25.

The judge sentenced Petitioner Hawkins to fifteen years on all charges except he received a five-year sentence on the gun charge and criminal conspiracy. All sentences were to run concurrent. App.23, ll. 8 – App. 24, ll. 13.

Hawkins filed a notice of appeal. His appeal was perfected by the Division of Appellate Defense in the Commission of Indigent Defense. The South Carolina Court of Appeals affirmed Petitioner Hawkins conviction on June 22, 2016. State v. Hawkins, Op. No. 2012-UP-326 (Ct. App. June 22, 2016).

On December 1, 2016, Petitioner Hawkins filed an application for post-conviction relief (PCR). The state filed a return on August 3, 2017. Petitioner Hawkins filed an amended PCR application on May 29, 2018. App. 97. An evidentiary hearing was held on June 4, 2018 before the Honorable Diane Schafer Goodstein. Petitioner Hawkins was represented by Ashley McMahon, and the state was represented by Christian Saville. App. 46.

At the PCR hearing, Petitioner Hawkins testified that his plea counsel was ineffective because he never filed any motions nor did anything to move forward on the charges as he did not “delve deep into his case.” Hawkins said there was no DNA that connected him to the crime scene. He admitted that he had been in the van as he had come to help Eric Mack move. App. 54, ll. 18 – App. 56, ll. 8. Hawkins said that he was not seen on the police dash-cam footage of the chase. App. 59, ll. 19 – App. 60, ll. 3. Hawkins said therefore, the police had to “hide” him under the “hands of one is the hands of all.” App. 55, ll. 1 – 9.

His attorney never told Hawkins that he could get life without parole, and never told him that he could get more or less than his four co-defendants. Two other co-defendants received

Fifteen years each and two others received only five years. App. 58, ll. 17 – App. 59, ll. 18. If his attorney had explained to him that he could get more or less than his co-defendants, he would have gone to trial and would not have pled guilty.

Hawkins testified that his plea counsel was ineffective because he did not explain the “hands of one is the hands of all” theory to him. If Hawkins had known about that theory, he would have gone to trial instead of pleading guilty. App. 65, ll. 19 – App. 66, ll. 3.

Plea counsel testified at the PCR hearing that Hawkins had always maintained his innocence. Counsel said that he believed that if he had discussed with Hawkins that he could get more time than his co-defendants, then he thought Hawkins would have gone to trial. Plea counsel believed that Hawkins pled guilty based on a sense of fairness that he was being treated the same as his co-defendants. Counsel did not believe that Hawkins was treated the same as his co-defendants. He thought that Hawkins would have gone to trial if counsel had explained that to him. App. 73, ll. 1 – App. 76, ll. 16.

The PCR judge issued an order on August 8, 2018 denying Hawkins’ PCR application and dismissing it with prejudice. App. 97 – App. 107. The judge found Petitioner Hawkins’ allegation that he would not have pled guilty if he had known that his co-defendants might receive more or less time than he received to be meritless. App. 105. The judge wrote that the sentences of his co-defendants were “wholly irrelevant” to Hawkins’ sentences. App. 106. Therefore, the judge found that plea counsel was not ineffective nor deficient in advising Hawkins of his potential sentences regardless of the sentences of his co-defendants. The judge found this allegation by Hawkins to be not credible. App. 106.

PCR counsel filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in not finding plea counsel ineffective for not informing Petitioner Hawkins that he could get more prison time than his co-defendants which was prejudicial to Petitioner because he testified that he would have gone to trial instead of pleading guilty if he had known that fact.

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).

The PCR court erred in not finding plea counsel ineffective. Counsel explained that he believed that Hawkins pleaded guilty out of a sense of fairness that he was being treated the same as his co-defendants. Counsel said that Hawkins was not being treated the same. It was counsel's duty to insure or at least argue for Hawkins to be treated the same. There was no evidence that counsel made that effort.

**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 April, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Beaufort County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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MICHAEL E. HAWKINS,

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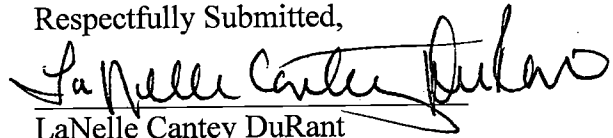
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Michael E. Hawkins 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 Diane Schafer Goodstein, which was held on June 4, 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 Michael E. Hawkins.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of April, 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."



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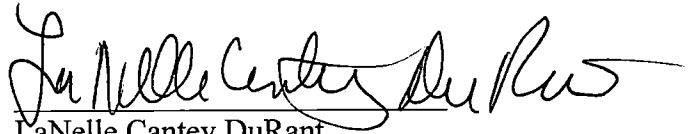
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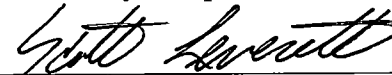
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CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Benjamin Limbaugh, 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 Michael E. Hawkins, #316547, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 19th day of April, 2019.



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

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

 (L.S)

Notary Public for South Carolina  
My Commission Expires: September 27, 2028.