

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

ANTWAN YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002015

JOHNSON PETITION FOR WRIT OF CERTIORARI

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Young’s guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate possible defenses..... 5

CONCLUSION 7

PETITION TO BE RELIEVED AS COUNSEL 8

ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring that Petitioner Young's guilty plea was entered voluntarily and knowingly because plea counsel failed to adequately investigate possible defenses?

STATEMENT

On December 16, 2014 in North Charleston, Petitioner Antwan Young was caught distributing 3.08 grams of heroin for \$700 to an undercover ATF agent. This transaction was recorded on camera. App. 8, ll. 1 – 7.

Again on January 7, 2015, Petitioner Young was caught distributing 13.64 grams of cocaine to an undercover agent. This incident again occurred in North Charleston and was determined to be a trafficking charge due to the amount. App. 8, ll. 8 – 11.

Both of these incidents were part of a two year operation by ATF and local agencies. App. 8, ll. 2 -3. In June 2017, the Charleston County Grand Jury indicted Petitioner Young on the charges of distribution of heroin and trafficking in cocaine. App. 87 – App. 88.

On August 24, 2017, Petitioner Young appeared before the Honorable R. Markley Dennis and entered a guilty plea to both charges. Young was represented by Adam Mlynarczyk, and the state was represented by Daniel Poulos. App. 1. The state offered a negotiated plea to trafficking cocaine second offense for a sentence of fifteen years, and a negotiated plea to distribution of heroin third offense for a sentence of fifteen years with both sentences to run concurrent. App. 4, ll. 1 – App. 7, ll. 8.

The judge accepted the negotiated sentences and sentenced Petitioner Young to fifteen years. App. 11, ll. 22 – App. 12, ll. 7. Petitioner Young did not appeal his convictions nor sentences. App. 71.

On December 4, 2017, Petitioner Young filed an application for post-conviction relief (PCR). The state filed a return on February 6, 2018. An evidentiary hearing was held on July 23, 2018 before the Honorable Deadra L. Jefferson. Petitioner Young was represented by Christopher L. murphy, and the state was represented by Kelly Oppenheimer. App. 29.

Petitioner Young testified at the hearing that he did not understand what a negotiated plea was at the time. However, he said that the plea deal sounded good at the time but by the end of the plea it was not. He pled guilty because his attorney told him that was the best thing for him to do. App. 54, ll. 1 – App. 55, ll. 13.

He did not want to plead guilty. He was threatened with life without parole if he went to trial instead of pleading guilty. App. 57, ll. 2 – 25. He felt that his attorney did not represent him and did not look for any defenses for him during the three years after he was arrested before he pled guilty. App. 58, ll. 1-6.

Petitioner Young wrote a letter to the solicitor because he felt that his attorney was not representing Young to his “full attention.” He wrote the letter on his own behalf “because if nobody don’t care about me, I care about myself.” App. 56, ll. 11 – 24.

Young said that he had had a drug problem “all of his life.” He had been accepted into a drug program but “they” turned that down. He believed that his attorney could have represented him better and could have at least spoken up for Young more. His attorney just did not represent him to his attorney’s full potential. App. 58, ll. 7 – 21. Young said that he wanted a new trial now. App. 61, ll. 2 – 22.

Plea counsel testified at the PCR hearing that he and Petitioner Young had difficulties in the beginning. Counsel filed a motion for clarification which Judge Dennis heard. The judge said to continue and Young agreed to continue with plea counsel. App. 39, ll. 1 – 25. Plea counsel testified that this was a big drug operation which involved the Federal Law Enforcement and SLED. Counsel said there were multiple drug buys with Petitioner but only two tested positive for drugs. App. 40, ll. 18 – 25; App. 43, ll. 2 – 24.

Counsel said that Petitioner Young was facing LWOP. Therefore, counsel believed that the fifteen year plea offer was the best way to go to avoid LWOP. Counsel said: “It was tough. The way I looked at it at that point was I was trying to save his life and I thought this was the best way to do it.” App. 45, ll. 2 – 21; App. 51, ll. 3 – 16.

When asked if counsel had discussed potential defenses with Young, counsel said that he told Petitioner that a trial was going to be “really tough.” Counsel said it would have been a “crap shoot” at trial to find something. App. 50, ll. 2 – 21.

The PCR judge issued an order on August 24, 2018 denying Petitioner Young’s PCR application and dismissing it with prejudice. App. 70 – App. 83. The judge found counsel’s testimony to be credible, and found Petitioner Young’s testimony to be not credible. App. 75. The judge wrote that Young did not provide plea counsel with any independent leads or witnesses to investigate. App. 77.

The judge also found that Petitioner failed to prove that his guilty plea was involuntary. The order provided that plea counsel provided thorough representation, and conducted a proper investigation. App. 82.

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 Young'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).

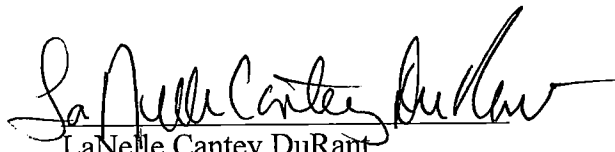
In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of the claim of ineffective assistance of counsel, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make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

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.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of June, 2019.

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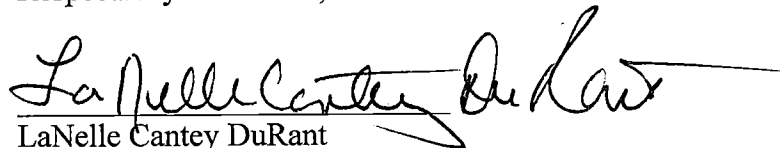
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwan Young 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 Deadra L. Jefferson, which was held on July 23, 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 Antwan Young.

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of June, 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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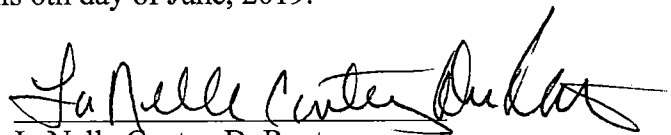
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RESPONDENT

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 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 Antwan Young, #297595, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 6th day of June, 2019.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.