

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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CHRISTOPHER E. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001822

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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 Smith’s guilty plea was entered voluntarily and knowingly because plea counsel failed to properly convey a plea offer of twenty-five years for a plea to voluntary manslaughter, and counsel failed to object when the court added five years to the sentence.....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 Smith's guilty plea was entered voluntarily and knowingly because plea counsel failed to properly convey a plea offer of twenty-five years for a plea to voluntary manslaughter, and counsel failed to object when the court added five years to the sentence?

## STATEMENT

On November 23, 2013, Cortland Gore and Aaron Campbell purchased marijuana from Petitioner Smith but used counterfeit money. When Smith realized what the men had done, Petitioner Smith went after the two men following them in his car. When Petitioner caught up with the men, Petitioner fired multiple rounds of bullets into the car of the two men Gore and Campbell. App. 8, ll. 3 – 13.

Cortland Gore was struck in the back of his head by a bullet and did die from that injury. Shots were also fired in the direction of Aaron Campbell. App. 8, ll. 1 – 25.

On February 20, 2013, the Horry County Grand jury indicted Petitioner Smith on the charges of murder and attempted murder. App. 101 – App. 106. On December 2, 2014, Petitioner Smith appeared before the Honorable Steven H. John for a guilty plea. Petitioner Smith was represented by Alex Hyman and Jordan Hyman. The state was represented by Stephen Grooms. App. 1.

Petitioner Smith pled guilty to the attempted murder charge as indicted, and to the lesser included charge of voluntary manslaughter. App. 2, ll. 1 – 16. The judge sentenced Smith to thirty years on the voluntary manslaughter charge, and to a concurrent thirty years on the attempted murder charge.. App. 14, ll. 13 – 25. Petitioner Smith did not appeal his convictions nor his sentences. App. 89.

On June 5, 2015, Petitioner Smith filed an application for post-conviction relief (PCR). The state filed a return on February 18, 2016. App. 88. An evidentiary hearing was held on November 15, 2016 before the Honorable Brooks Goldsmith. Petitioner Smith was represented by Steven Fowler, and the state was represented by Jessica Kinard. App. 30.

Petitioner Smith testified at the PCR hearing that his plea counsel was ineffective because he coerced Petitioner into stopping his trial and pleading guilty which made Smith's guilty plea involuntary. App. 37, ll. 24 – App. 38, ll. 9. Smith told his attorney that he did not do this crime and that law enforcement had the wrong person. Smith's attorney did not try to show Smith's innocence with law enforcement. App. 48, ll. 23 – App. 49, ll. 19.

Petitioner Smith pointed out that law enforcement coerced him into making a statement which was involuntarily made. Law enforcement used emotional stress and his family's emotional stress to make Smith give a statement and hence plead guilty. His statement was recorded. App. 40, ll. 7 – App. 43, ll. 24. His attorney told him that if he went to trial and the jury heard that tape, Smith would be found guilty. App. 44, ll. 1 – 19.

Smith told the court that the state had made a potential plea offer of twenty-five years if he pled guilty but his lawyer did not deliver that offer to him until later. Then his attorney told him that he would see if he could get it “knocked down some.” The next offer Smith knew was at the trial, and the judge said he would not give Smith the twenty-five years offer but was adding five years to it “to make the solicitor happy.” App. 46, ll. 1 – App. 47, ll. 22.

Petitioner Smith testified that his plea counsel represented him in a “poor manner” and that his attorney's performance and representation of him was “poor.” App. 53, ll. 1 – 17.

Petitioner Smith's plea counsel, Alex Hyman, testified at the PCR hearing that he was hired by Smith and his family to represent Smith. App. 62, ll. 1 – 24. Counsel explained that the twenty-five years offer was made orally at the May or June roll call by the prosecutor, Donna Elder. Ms. Elder also told counsel that she was leaving the prosecutor's office and would not be prosecuting Smith's case. Counsel said that he and Smith decided to wait and see who the new prosecutor would be and keep working on the case. App. 64, ll. 16 – App. 65, ll. 7.

Counsel testified that they could not decide whether to have a plea or trial as neither one was ever definite. The evidence was the audio interview of Smith and the testimony of the victim, Aaron Campbell. App. 65, ll. 8 – 25. After the judge denied the motion to suppress Smith’s statement following the Jackson v. Denno<sup>1</sup> hearing, the judge asked the solicitor to put voluntary manslaughter “back on the table” for thirty years. App. 70, ll. 9. Then Smith decided to plead guilty after counsel recommended he take the plea. App. 70, ll. 10 – App. 72, ll. 7.

Petitioner Smith then entered a guilty plea, and the judge sentenced him to thirty years. App. 74, ll. 2 – 25.

The PCR judge issued an order on September 25, 2018. App. 88 – App. 100. The judge found that “to the extent that the testimony at the evidentiary hearing conflicted, the judge found Counsel’s testimony to be credible and found Applicant’s testimony to be not credible.” App. 95. The judge found that Smith failed to prove deficiency on the part of plea counsel, and failed to prove prejudice. App. 95. The judge found that the twenty-five year plea offer was communicated to Smith, which he rejected. Then a new offer was made upon consultation with the trial judge. App. 98. The judge denied Smith’s PCR application and dismissed it with prejudice. App. 100.

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

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<sup>1</sup> Jackson v. Denno, 378 U.S. 368 (1964).

## ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that Petitioner Smith's guilty plea was entered voluntarily and knowingly because plea counsel failed to properly convey a plea offer of twenty-five years for a plea to voluntary manslaughter, and counsel failed to object when the court added five years to the sentence.

Failure of counsel to communicate a plea offer constitutes deficient performance, and prejudice may be determined through evidence that would show that but for counsel's failure, applicant would have accepted the proposed bargain to his benefit. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009).

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

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 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).

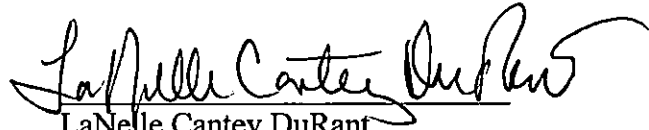
A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). The applicant must show that there is a reasonable probability that but for counsel's 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 for not conveying the twenty-five year plea offer and for not objecting to the judge adding five years to the sentence. This was prejudicial to Petitioner Smith because his period of incarceration was extended. And He did not have the advantage of a twenty-five year sentence.

**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 1st day of April, 2019.

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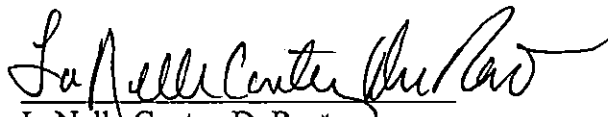
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Christopher Evon Smith 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 Brooks P. Goldsmith, which was held on November 15, 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 Christopher Evon Smith.

Respectfully Submitted,

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 1st 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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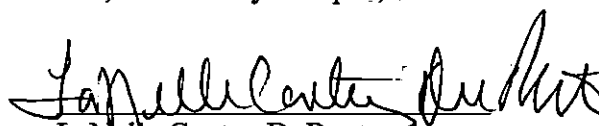
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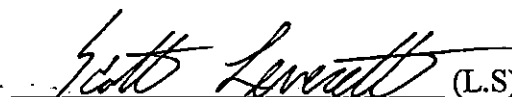
CERTIFICATE OF SERVICE

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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 Johnny Ellis James, Jr., 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 Christopher Evon Smith, #362308, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 1st day of April, 2019.

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 1st day of April, 2019.

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

