

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County
Roger L. Couch, Circuit Court Judge

S.C. Supreme Court

JEREMY J. JETER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213167

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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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's guilty plea was entered freely, voluntarily and knowingly?

STATEMENT

In September 2008, the Spartanburg County Grand Jury indicted Jeremy J. Jeter on the charges of assault and battery with intent to kill (ABWIK), and unlawful possession of a weapon. On April 13, 2010, Jeter appeared before the Honorable J. Derham Cole and entered a guilty plea to ABWIK. He was represented by Tanya Jones and James A. Cheek. The state was represented by Barry Joe Barnette. Judge Cole sentenced Jeter to twenty years suspended to the service of fifteen years and five years probation. App. 42, ll. 9 – 24. Jeter did not appeal his conviction or sentence.

On January 18, 2011, Jeter filed an application for post-conviction relief (PCR). The state filed a return on December 7, 2011. An evidentiary hearing was held on June 12, 2012 before the Honorable Roger L. Couch. Jeter was represented by Howard R. Kinard, and the state was represented by Ashleigh R. Wilson. App. 68. On September 14, 2012, Judge Couch issued an order denying Jeter's PCR application and dismissing it with prejudice. App. 150 – App. 160. Jeter's attorney filed notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find plea counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly.

At Jeter's guilty plea hearing, the state provided the facts of the incident that occurred on July 19, 2008 at 3:27 in the morning at Club Hush in Spartanburg. Deputy Turner with the Sheriff's Office was at the club on an unrelated matter when he heard gunshots from behind the club. He found Terry Sims who had been shot through his right shoulder and was covered in blood. App. 17, ll. 11 – App. 18, ll. 10.

Sims gave a description of the shooter who had run away. The deputies found him and took him into custody. Jeter told them that he wanted to leave Club Hush and asked a man to use his phone to call his ride. After his phone call, someone started shooting at him, and he shot him one time because he felt his life was threatened. He thought he would die if he did not shoot. He said it was all a mistake. App. 18, ll. 6 – App. 19, ll. 13.

Terry Sims told the deputies that a black man came up to him and asked to use his phone which Sims allowed. After the man gave the gun back, the man reached under his shirt and got a gun from his waistband and shot Sims. Then he ran away. App. 19, ll. 14 – 19.

Jeter was represented by two attorneys at his guilty plea. App. 5, ll. 1 – App. 6, ll. 25. Jeter told the plea judge that he had a defense but he did not think it would be convincing at trial. Jeter explained that he did not shoot the man. It was a gunfight and someone was shooting at Jeter so Jeter shot back. He was acting in self-defense. The judge told him that was a complete defense to homicide. App. 8, ll. 21 – App. 9, ll. 25. Jeter told the judge he still wanted to go forward with his guilty plea. App. 10, ll. 1 – App. 11, ll. 4.

At his PCR hearing, Jeter testified that his attorneys did not represent him properly, and his guilty plea was involuntary and unknowingly made. App. 71, ll. 1 – 25. He met his attorneys the

day he pled guilty although he had sent requests to see her two months before the plea. App. 76, ll. 5 – App. 77, ll. 2; App. 79, ll. 1 – App. 80, ll. 22; App. 126, ll. 1 – 25. Ms. Jones did not discuss any of the evidence with him. If he had had more information, he would not have pled guilty. He pled guilty because he felt he had no other option. App. 81, ll. 1 – App. 82, ll. 22.

Jeter said that Mr. Cheek met with him only when he pled guilty. Mr. Cheek did not discuss anything about the case with him. App. 82, ll. 23 – App. 83, ll. 19. Jeter told the judge at his first court appearance that he wanted a trial. App. 77, ll. 1 – App. 78, ll. 16.

Ms. Jones, one of Jeter's plea attorneys, testified that she only met with Jeter the week in April when his case appeared on the trial docket although she knew she was appointed to represent him in February. App. 101, ll. 1 – 24. She admitted that she had a SLED DNA report showing that a swab taken from a .40 caliber pistol could not exclude Jeter as a possible contributor. Then she admitted that she did not request a comparison of the gun with the bullet taken from the victim or with any casings although that information may have been material to Jeter's guilt. App. 103, ll. 1 – 25. She thought the bullet from the victim was not saved. Also, Jeter gave a statement admitting he was at the incident scene. App. 103, ll. 1 – App. 104, ll. 25.

Counsel Jones did not interview any of the police officers; she did not get the names of the girls who the victim said were there as eyewitnesses. App. 195, ll. 2 – 7; App. 108, ll. 21 – App. 110, ll. 1. She admitted she did not talk with the officer who wrote the incident report about the other six to nine shots that were fired although she admitted that would have been significant information. App. 112, ll. 1 – 25.

Counsel Jones said she felt rushed that week to resolve Jeter's case as it was old. Jeter had a shorter time period in which to decide whether to plead or go to trial. App. 115, ll. 24 – App. 116, ll. 10.

Plea attorney Cheek testified that he met with Jeter only once to any degree the morning of the plea. App. 125, ll. 1 – App. 126, ll. 25. Jeter was at the point of exasperation, almost irrational, and very ambivalent about what to do before he pled guilty. He shared that with Ms. Jones, and they talked to him. App. 127, ll. 20 – App. 128, ll. 11.

Cheek did not get the names of the female witnesses. He admitted that the presence of other shooters would have been a defense for Jeter. App. 122, ll. 1 – App. 124, l. 24. Cheek also admitted that it would have been helpful if the investigators in his office had followed up with an investigation into the information that other shooters were present. App. 128, ll. 1 – App. 130, ll. 7.

Attorney Cheek also testified that other family members influenced Jeter's decision to plead guilty. His mother and brother were involved and it became very emotional. Cheek was not sure that Jeter was in complete control of his faculties when he pled guilty. App. 134, ll. 15 – 25.

The PCR judge ruled that Jeter's guilty plea was entered knowingly and voluntarily. The judge ruled that plea attorneys demonstrated the normal degree of skill, knowledge, professional judgment, and representation expected of an attorney who practices law in South Carolina. The judge wrote that Jeter did not meet his burden of proof regarding his claims of ineffective assistance of counsel. App. 156.

The judge also ruled that plea counsel was not ineffective for failing to investigate the possibility that multiple shooters were present at the crime scene. Jeter's PCR attorney did not provide any evidence as to what would have resulted from further investigation.¹ App. 158.

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.

¹ See Martinez v. Ryan, 132 S.Ct. 1309 (2012) which held that where under state law, ineffective assistance of trial counsel claims must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal

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, 466 U.S. 668, 104 S.Ct. 2052 (1984).

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. 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). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of a claim of ineffective assistance of counsel, while the scope of a reasonable

habeas court from hearing those claims if, in the initial-review collateral proceeding, there was no counsel or counsel was ineffective in that proceeding.

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.


The failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). Trial counsel is ineffective if his failure to present evidence alters the outcome of the trial. Hicks v. State, 314 S.C. 280, 443 S.E.2d 907 (1994).

Both plea attorneys were ineffective for not thoroughly investigating Jeter's case. They should have requested a comparison of the gun with any casings or bullets from the scene or at least determined if the bullet recovered from the victim was available. Counsel should also have investigated the possibility of other shooters being present. It was prejudicial to Jeter to plead guilty without more information and more time to decide.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L".

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
ROGER L. COUCH, CIRCUIT COURT JUDGE

JEREMY J. JETER,

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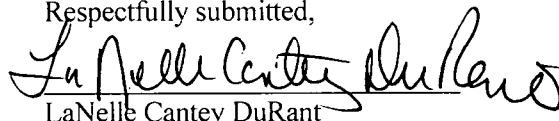
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeremy J. Jeter states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 12, 2012. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Jeremy J. Jeter.

Respectfully submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
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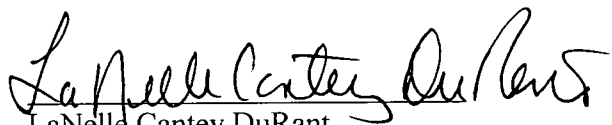
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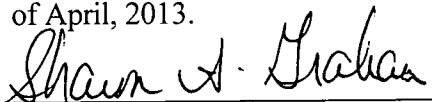
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jeremy J. Jeter, #335454, at Lieber Correctional Institution this 24th day of April, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of April, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2022.