

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2010-CP-42-1458;
Appellate Docket No. 2013-000780

Thomas Jerome Williams, 255549, Appellant/Petitioner,

v.

State of South Carolina, Respondent.

MOTION TO REINSTATE

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JUN 18 2013

S.C. SUPREME COURT

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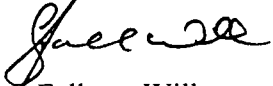
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Thomas Jerome Williams, 255549, Appellant/Petitioner,
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State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that on the 16th day of June, 2013, I served a copy of the Appellant/Petitioner's Motion to Reinstate on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Suzanne H. White, Asst. Atty. Gen.
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Respectfully submitted,

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MOTION

Now into Court comes the Applicant who, pursuant to Rule 240, moves this Court to reinstate the appeal of this case.

The Appellant's request for relief in this case arises out of a defective search warrant. Evidence introduced at the Appellant's trial was obtained through the use of an unsigned search warrant. (Pg. 1-4). Appellant contends that pursuant to a recent holding of the Supreme Court the unsigned warrant was invalid and that no reasonable officer could have relied upon it. State v. Covert, 382 S.C. 205 (2009). The failure of Appellant's counsel to assert a proper challenge to the search warrant at various stages of the Appellant's trial and post trial proceedings constitutes ineffective assistance of counsel. As a result the Appellant's conviction and sentence are unlawful and in violation of both State and Federal law.

At issue in this case is whether or not the Appellant is barred from bringing this claim pursuant to S.C. Code Section 17-27-45(a). Although the Appellant's present action was filed more than one year from the date of his conviction, and the Appellant has attempted to raise this issue in a prior post conviction relief action, he is not barred as he never had a ruling on this particular issue.

Under S.C. Code Section 17-27-90, the Appellant's claim is still viable if he has not waived the claim and the claim has never been fully adjudicated:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or

amended application.

§ 17-27-90. *Grounds for relief.*

The procedural viability of the Appellant's claim rests in whether or not he waived his claim, and if not, whether it was finally adjudicated. A review of the record shows neither has occurred in the Appellant's case.

Appellant clearly did not waive the issue as to the invalid search warrant. Appellant raised the issue specifically in his amendment to the application. (P. 14). A review of the transcript from his initial PCR shows that he raised the issue during his testimony. (P. 23, l. 15-P. 24, l. 5). Despite the Appellant's raising the issue in the prior PCR through his pleadings and testimony, the court failed to make specific findings of fact or rule on the issue in its Order of Dismissal. (P. 25-32). Appellant's counsel appears to have failed to file a post trial motion pursuant to Rule 59(e) or if he did, no order was ever entered as a result of it. Counsel then filed an appeal from the PCR raising the issue of the search warrant in a Johnson brief. (33-38). Appellant raised the search warrant issue as well on appeal through a *Pro-Se Johnson* Brief (50). The Appellant also raised the trial court's failure to make specific findings or otherwise rule on the issue. (53). Upon review of the case on appeal, this Court did not address the search warrant issue, presumably because the issue was never ruled on by the PCR court. (53).

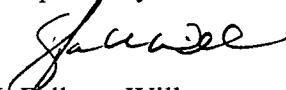
The failure of counsel to adequately raise the search warrant issue by way of Rule 59(e) motion, or otherwise obtain a ruling on the search warrant issue in the first PCR case should not preclude the Appellant from presenting the issue in this action. The failure of PCR counsel to properly preserve the issue for review by this Court in the first case was error that clearly prejudiced the Appellant. As an equitable matter, even a collateral proceeding such as a PCR, if

undertaken with no counsel or ineffective counsel, would not be sufficient to ensure that proper consideration was given to a substantial claim. See Martinez v. Ryan, ___ U.S. ___, 132 S.Ct. 1309 (2012). Here, Appellant's Fourth Amendment issue under Covert, presents a substantial claim. One that should not be allowed to fail based on prior counsel's error. Especially in light of the Appellant's continuous and obvious attempts to keep his claim alive.

The record in this case fails to show that the Appellant ever intended to waive the search warrant issue. In light of the Appellant's continuous attempts to pursue the issue combined with the lack of any specific findings or ruling by the trial court, the issue was never finally adjudicated as contemplated by S.C. Code Sections 17-27-45(c) and 17-27-90. As a result, the Appellant should not be barred from raising the issue in the present action. Pursuant to the express terms of S.C. Code Section 17-27-90, a claim should not be barred unless waived, or raised and adjudicated. Neither is the case here. Appellant's action should therefore be deemed timely.

WHEREFORE the Appellant moves this Court to reinstate the appeal.

Respectfully submitted,



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June 16, 2013.