

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable J. Derham Cole, Circuit Court Judge

Opinion No. 2022-UP-380
S.C. Ct. App. Filed October 12, 2022
Withdrawn, Substituted and Refiled November 16, 2022

ADONIS WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000168

Motion in Opposition to Respondent's Motion to Strike

Counsel for Petitioner opposes Respondent's motion to strike filed March 6, 2023.

1. This is an appeal from a post-conviction relief action following conviction at trial. The PCR hearing was held on February 1, 2016, before the Honorable J. Derham Cole. In a 48- page written order signed September 10, 2018, Judge Cole denied relief on nine

allegations of ineffective assistance of counsel but granted a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

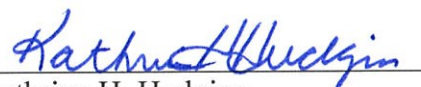
2. A timely notice of intent to appeal was filed and the petition for writ of certiorari and separately filed brief pursuant to White v. State were filed on March 11, 2019. On July 31, 2019, the South Carolina Supreme Court, pursuant to Rule 243(1), SCACR, transferred the case to the South Carolina Court of Appeals. On October 12, 2022, the Court of Appeals granted the petition for writ of certiorari as to the belated appeal issue and affirmed the convictions. The Court of Appeals denied the petition for writ of certiorari as to the nine (9) allegations of ineffective assistance of counsel. Adonis Williams v. State, 2022-UP-380 (S.C. Ct. App. Filed October 12, 2022). A timely petition for rehearing was filed on October 27, 2022. On November 16, 2022, the Court of Appeals withdrew the former opinion and substituted with a refiled opinion. Williams v. State, 2022-UP-380 (S.C. Ct. App. Filed November 16, 2022). A second petition for rehearing was filed on November 28, 2022, and denied on January 4, 2023.

3. On February 3, 2023, Petitioner filed a petition for writ of certiorari to the Court of Appeals with this Court. The petition addresses two questions. The first question, the belated appeal issue, is whether the Court of Appeals erred in finding that Petitioner abandoned his cell phone resulting in the prejudicial admission of text messages obtained by a warrantless search of the cell phone. The second question is whether the decision by the Court of Appeals to summarily deny the petition for writ of certiorari as to all nine (9) allegations of ineffective assistance of counsel constitutes an abuse of discretion that distinguishes the present case from Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009),

and allows review by this Court when Petitioner alleged that the cumulative effect of the eight separate instances of ineffective assistance of counsel established prejudice requiring a new trial.

4. In question two Petitioner specifically argued that the present case is distinguished from Ellison, Haggins v. State, 377 S.C. 135, 659 S.E.2d 170 (2008), and Missouri v. State, 378 S.C. 594, 663 S.E.2d 480 (2008), the cases relied upon by Respondent for the motion to strike. As with any issue presented to the Court, the question should be fully briefed and litigated by both Petitioner and Respondent. The issue raised by Respondent in the motion to strike should instead be raised in the return to the petition for writ of certiorari.
5. This Court should deny Respondent's motion to strike.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT

This 16th day of March, 2023.