

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

Opinion No. 2025-UP-077 (S.C. Ct. App. Filed March 5, 2025)

Lower Court Case No. 2016-CP-23-07610

WILLIE M. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000796

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Willie Marvin Williams, Respondent-Petitioner,

v.

State of South Carolina, Petitioner-Respondent.

Appellate Case No. 2020-000796

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Unpublished Opinion No. 2025-UP-077
Heard December 5, 2024 – Filed March 5, 2025

REVERSED

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all of Columbia, for Petitioner.

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PER CURIAM: In this appeal from the grant of Willie Marvin Williams's
application for post-conviction relief (PCR), this court granted certiorari to review

whether the PCR court erred in (1) finding that trial counsel was ineffective for failing to object to the trial court's jury charge on mutual combat and (2) denying the State's motion to alter or amend the order granting PCR without specifying whether it granted relief on all or some of Williams's convictions. The State argues that if the PCR court's grant of PCR is allowed to stand, it should be limited to Williams's murder conviction. We reverse.

FACTS AND PROCEDURAL HISTORY

In April 2013, a Greenville County grand jury indicted Williams for murder, attempted murder, unlawful conduct towards a child, and possession of a weapon during the commission of a violent crime. Williams was accused of murdering his wife, Natasha Kerns, attempting to murder Kerns's boyfriend, Anthony Wilson, and unlawful conduct towards Kerns's son (Son).

Kerns called 911 from her cell phone on July 10, 2010, at about 4:50 a.m. On the recording of the 911 call, Kerns told the operator that she believed someone was outside her home because she heard noises and her dogs barking. She stated she and Williams were divorcing and that an order of protection was in progress. She stated she had a pistol for her own protection. She then told the 911 operator that the person outside was Williams and that he was on her front porch. After a loud noise could be heard on the recording, Kerns stopped responding to the 911 operator.

During the trial, Son¹ testified that on the night of Kerns's death he knew something was wrong when he "heard the first fire." He testified that Wilson was in his room when this occurred. Son recalled that he saw Williams's Chrysler outside his window. Son testified he crawled into the hallway because he heard gunfire and saw Williams standing over Kerns's body shooting her. Son stated he saw Williams leave in his car.

Wilson testified he met Kerns at a night club in Charlotte. He recalled that on July 9, 2010, he visited Kerns in Greenville and spent time with her, Son, and her daughter (Daughter). Wilson stated he woke up after going to sleep in Kerns's house because he heard the dog barking and "some ruckus going on around outside the house." He testified that Kerns got out of bed, grabbed a gun from the floor under her bed, and ran towards the front of the house. Wilson stated he took Daughter to Son's room. He remembered hearing Kerns saying "something about

¹ Son was nine years old at the time of the incident and twelve when he testified at trial.

get away from my property, get away from my house, and stuff like that." Wilson stated he heard banging outside and Kerns talking before it went "straight silent." He testified he put Daughter on the bed with Son and then saw "a silhouette of a human being coming down the hallway." He stated the person he saw was a man he had never seen before. Wilson testified the man looked in Kerns's room, then walked down the hallway and shot into Son's room three times, hitting Wilson with the first shot. Wilson testified he was unconscious for an unknown amount of time and woke up to Son shaking him. He stated that when he left Son's room, he found Kerns dead by the window in the front room of the house and that before he could leave the house the police arrived.

Cynthia Booker, who was Williams's girlfriend in July 2010, testified that she, her aunt, and Williams went to a club on the night of July 9, 2010. Booker stated that Williams left her and her aunt at the club around 3:45 a.m. on July 10, 2010. She testified that Williams left in a hurry and she and her aunt had to find another ride home.

Williams testified he called Kerns around 4:15 or 4:30 a.m. on July 10, 2010, but she did not answer. He stated he then drove to Kerns's house, where he saw a vehicle that he did not recognize. Williams testified he attempted to open the storm door of the house but found it was locked. He testified he knocked on the front door of the house for three to five minutes but received no answer. He recalled that when he turned to walk away from the door he saw a curtain move, so he tried to "peep in through the window." Williams testified he then heard a noise behind him and turned to see a man, whom he identified as Wilson, approaching him with a gun pointed at him. He demonstrated how he acted in self-defense to the jury. He stated the gun went off while the men were struggling with each other. Williams testified that they continued "wrestling" and fell through the window into the home. He recalled the other man "got away from" him and may have lost the gun temporarily before retrieving it. Williams stated he and the man continued to fight as they moved through the house, during which the gun was fired three times and the man fell to the ground. He testified he did not see Daughter or Son in the bedrooms. He stated he then found Kerns in the front room with no pulse and he began to have an "anxiety attack." Williams testified he saw that Kerns had called 911, "flipped out," and left the home.

Williams testified he went home, paced around his yard, and then got back in the Chrysler. He stated that when he saw the Chrysler's gas light was on, he decided to drive his Chevrolet Tahoe instead. Williams recalled that he drove towards Laurens, stopped at the church where his mother was buried, and went to find Son and Daughter. Williams stated he stopped and spoke to a friend of his, Tracy Irby,

and told him he had "messed up" because if he had not gone to Kerns's house he "wouldn't have got into the altercation and things." Williams testified he had decided to return to his house when he passed a Laurens County Sheriff's officer's car that began to follow him. He stated he continued to drive through Laurens with the officer following him and that the police had blocked various roads to stop him. Williams recalled that he had turned into a parking lot to avoid police when the officer's car hit the back of the Tahoe. He testified that he took a knife out of the Tahoe's glove compartment and stabbed himself in the chest because he was suicidal.

The parties stipulated that a properly administered and stored gunshot residue test was performed on Wilson and showed he had gunshot residue on his right palm, the back of his right hand, his left palm, and the back of his left hand. The parties further stipulated that a handprint found on a 1995 Lexus parked behind Kerns's home was identified as Wilson's handprint.

James William Armstrong, who worked in the forensics division crime laboratory for the Greenville County Department of Public Safety, testified that gunshot residue could get on a person's hands "from actual contact with an area that may have gunshot residue on it, being in close proximity of a firearm when it's being fired, or even handling firearms." Armstrong also testified that the bullet from Kerns's autopsy, the bullet recovered from the wall of Son's room, and bullets taken by police from Williams's home in Laurens pursuant to a search warrant were all .38 caliber bullets.

The trial court charged the jury on self-defense and accident. The trial court also charged the jury on mutual combat, stating:

If the Defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true if even during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In

addition, it must be shown that both parties were armed with a deadly weapon.

Trial counsel did not object to the trial court's instruction.

The jury found Williams guilty as indicted, and the trial court sentenced him to life imprisonment for murder, thirty years' imprisonment for attempted murder, and ten years imprisonment for unlawful conduct towards a child. The trial court also imposed a sentence of five years' imprisonment, suspended to time served, on the charge of possession of a weapon during the commission of a violent crime. Williams appealed and this court affirmed his convictions. *State v. Williams*, 2016-UP-215 (S.C. Ct. App. filed May 18, 2016). Williams filed an application for PCR on December 28, 2016. In his PCR application, Williams argued, among other things, that "trial counsel was ineffective in failing to object to the jury charge as to mutual combat when no evidence was presented in support of such a charge."

During the PCR hearing, Williams testified that Wilson's "bloody handprint" on the car behind Kerns's house was proof he went outside that night despite the fact that Wilson did not admit to going outside Kerns's house after her death. Williams stated that the inconsistencies in the trial transcript indicated that the State did not have a solid case due to factual disputes and therefore an error of law could have affected the outcome of the case. One of Williams's trial counsel testified he did not recall whether the trial court instructed the jury that mutual combat negated self-defense. Both trial counsel testified they were not familiar with *State v. Taylor*,² in which our supreme court held that the trial court's mutual combat charge acted as a limitation on a defendant's ability to claim self-defense.

The PCR court granted PCR, finding trial counsel was ineffective for failing to object to the jury charge on mutual combat. The PCR court found that the mutual combat charge negated the self-defense charge and therefore prejudiced Williams. The PCR court also found a reasonable criminal defense attorney should have been aware of the *Taylor* case and that even if they were not aware of *Taylor*, trial counsel should have objected to the mutual combat charge because the evidence did not support mutual combat.

² 356 S.C. 227, 235, 589 S.E.2d 1, 5 (2003) (finding that "the court's mutual combat charge acted as a limitation on the Petitioner's ability to claim self-defense, and prejudiced him by transferring the *State's burden* to disprove self-defense onto the Petitioner, forcing him to prove self-defense").

The PCR court's order stated "the conviction of Willie M. Williams is overturned and a new trial is granted." The State filed a Rule 59(e), SCRCP, motion, arguing the PCR court should clarify which of Williams's convictions were affected by the grant of PCR and that the grant of a new trial should be limited to his murder conviction. The State also argued the PCR court erred in granting PCR because the mutual combat charge did not prejudice Williams when self-defense was not his main argument and any burden shifting caused by the instruction did not prevent him from asserting his main defense, that of accident. The PCR court denied the State's motion.

ANAYSIS

"In post-conviction proceedings, the burden of proof is on the applicant to prove the allegations in his application." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). An appellate court will "defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them." *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). However, an appellate court "review[s] questions of law de novo, with no deference to trial courts." *Id.* at 180-81, 810 S.E.2d at 839.

I. Ineffective Assistance of Counsel

The State argues the PCR court erred in finding trial counsel deficient for failing to object to the trial court's jury charge on mutual combat. The State further argues the PCR court erred in finding the mutual combat jury instruction prejudiced Williams because his primary defense at trial was accident, not self-defense, and there was no reasonable probability of a different outcome had the trial court not given the mutual combat charge "when the overwhelming evidence fail[ed] to show self-defense." We agree in part.

We hold the PCR court erred by finding that trial counsel's deficient performance prejudiced Williams. *See Strickland v. Washington*, 466 U.S. 668, 687-88, 694-96 (1984) (holding that to establish a claim for ineffective assistance of counsel, a PCR applicant must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different); *id.* at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."). We hold there is no reasonable probability the result of the trial would have been different had trial counsel objected to the trial court's mutual combat charge given the evidence presented. *See Jackson v. State*, 355 S.C. 568, 573, 586 S.E.2d 562,

565 (2003) (reversing the PCR court's grant of PCR, finding that although counsel was deficient for failing to request a self-defense charge, the instruction would not have affected the outcome of trial given the overwhelming evidence presented of Jackson's guilt). Williams testified he was served notice of a July 13, 2010 court hearing for an order of protection Kerns sought against him and for child support. He stated Kerns had told him she was afraid of him and had called the police because she said he was threatening her during an argument they had in May 2010. Booker recalled Williams leaving her and her aunt abruptly at a club in the early morning of July 10, 2010. On the recording of her 911 call, Kerns stated she believed Williams was on her front porch. Seconds later, a loud noise was heard and Kerns stopped responding to the 911 operator. Kerns was shot through the front window of her home. Taken together with Williams's testimony, the 911 call contradicted his version of events. Wilson and Son testified that Wilson was in Son's room when Williams entered Kerns's house and began shooting, contradicting Williams's testimony that Wilson approached him outside the house with a gun and that the shooting occurred while they fought. Williams also switched cars when he returned home, led police on a high-speed chase, and stabbed himself with a knife after an officer hit his car with a patrol car to force him to stop. Additionally, Officers found bullets of the same caliber as those used in the shooting in Williams's house in Laurens. Given the evidence presented during the trial, we hold there is no reasonable probability the outcome of the trial would have been different had the trial court not given the mutual combat charge. Accordingly, we reverse the PCR court's grant of PCR.

II. Convictions Affected by PCR

The State argues the PCR court erred by failing to specify whether it granted a new trial only as to Williams's murder conviction or as to all of his convictions. Because we reverse the PCR court's grant of PCR, this court need not reach this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address the appellant's remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Based on the foregoing, the PCR court's order granting Williams's application for PCR is

REVERSED.

THOMAS, HEWITT, and VINSON, JJ., concur.

Mar 14 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

Opinion No. 2025-UP-077

WILLIE M. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000796

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Willie M. Williams, respectfully requests this Court grant rehearing. On March 5, 2025, this Court reversed the PCR court's grant of relief. Willie Marvin Williams v. State, No. 2025-UP-077 (S.C. Ct. App. filed March 5, 2025). This Court found the PCR court erred in finding Petitioner was prejudiced by trial counsel's failure to object to an unwarranted mutual combat charge. Counsel respectfully submits that in reversing the finding of prejudice by the PCR court as a result of counsel's failure to object to the unwarranted mutual combat charge this Court overlooked the specific impact of counsel's error on Petitioner's defenses of self-defense and accident and instead focused solely

on the purported strength of the State's case. In determining prejudice the purported strength of the State's evidence must be considered along with the specific impact of counsel's error. See Smalls v. State, 422 S.C. 174, 810 S.E.2d 843 (2018). The unwarranted mutual combat charge prevented the jury from considering both self-defense and accident. There is a reasonable probability that, but for counsel's failure to object to the unwarranted mutual combat charge, the jury could have considered both self-defense and accident and the outcome of the proceeding would have been different. Counsel respectfully seeks rehearing.

This Court found Petitioner failed to prove prejudice writing, "We hold there is no reasonable probability the result of the trial would have been different had trial counsel objected to the trial court's mutual combat charge given the evidence presented." Williams, No. 2025-UP-077, at 6. This Court did not specifically address the deficiency prong with trial counsel's failure to object to the unwarranted mutual combat charge. The PCR court correctly found both deficient performance and prejudice.

1. The PCR judge correctly found that the trial lawyers were ineffective for failing to object to the jury instruction on mutual combat when there was no evidence of mutual combat.

The jury found Respondent, Willie M. Williams, guilty of the murder of his wife, Natasha Kerns, and the attempted murder of her friend, Anthony Wilson in 2010. At trial, Williams testified that he acted in self-defense when Wilson, armed with a gun, approached him outside of the house where Kerns was living. The two men struggled over the gun and it accidentally discharged, killing Kerns.

In 2007, Williams and Kerns became romantically involved and they had a daughter that same year. (App. p. 484, line 6 – p. 485, lines 1-23). The couple married in 2009, when Williams was home from Iraq where he was working. (App. p. 492, lines 12-15). In February

of 2010, Williams resigned from his job in Iraq because of the stress of the working environment and he moved in with Kerns and their daughter and her son. (App. p. 494, line 1 – p. 495, lines 1-13). At the time of the shooting in July of 2010, however, Williams and Kerns had separated. (App. p. 510, lines 2-4). Kerns was living with the children in the home she had shared with Williams in Greenville County. Williams was living in his home in Gray Court.

On the night of the shooting Williams went to some clubs in Greenville. (App. pp. 520-525). Williams testified that he left the last club between 4:15 and 4:30 AM. (App. p. 526, lines 6-8). Williams was supposed to pick up his daughter in a few hours. (App. p. 524, lines 2-6). Williams testified that he called Kerns' cell phone and the house phone but she did not answer. (App. p. 526, lines 10-14). Williams testified at trial, "So, instead of driving 50 miles back to Gray Court, I had my key to the place. So I said I was going to ride over there." (App. p. 526, lines 15-17).

When Williams got to Kerns' house he saw a parked unfamiliar SUV with North Carolina plates. (App. p. 526, lines 21 – 25). He did not see Kerns' car. (App. p. 526, lines 21 – 25). He parked behind the SUV and went to the front door. (App. p. 527, line 25 – p. 530, lines 1- 2). The storm door was locked and he was unable to use his key. (App. p. 529, lines 13-17). He knocked on the door for three to five minutes. (App. p. 529, lines 20-21). As Williams turned to leave, he heard a noise and then saw a man approaching him with a weapon. (App. p.530, lines 12-14). Williams testified that the man pointed a gun at Williams, Williams reacted in self-defense, the two men struggled over the gun and the gun went off. (App. p. 535, line 21 – p. 536, lines 1-25). As they continued to wrestle over the gun, both men fell through the front window and the struggle continued inside the house. (App. p. 537, lines 1-25). Williams described another struggle over the gun and said, "And then that's when the gun went off, pow, pow, pow." (App. p. 539, lines 4 – 14).

The man he was struggling with went to the floor and did not move. (App. p. 539, lines 15 – 20). Williams then saw Kerns on the floor and “blood everywhere.” (App. p. 540, lines 6 – 13). Williams rushed over to Kerns and checked for a pulse but found none. (App. p. 540, lines 6-10). Williams began crying, panicked and left the scene. (App. p. 540, lines 6 – 25).

The man who Williams struggled with, Anthony Wilson, testified at trial. Wilson testified that on the night of the shooting he was asleep in bed with Kerns and her daughter when he was awakened by dogs barking and some banging. (App. p. 288, line 12 – p. 289, 290, lines 1-15). According to Wilson, when he awakened Kerns she immediately hopped up, grabbed her weapon and ran toward the front. (App. p. 290, lines 11 – 19). Wilson testified that he took the daughter to the son’s room. (App. p. 291, lines 1 – 3). Wilson testified he heard Kerns talking and heard her “say something about get away from my property, get away from my house.” (App. p. 291, lines 18 – 25). Wilson then testified that he saw the “silhouette of a human being come down the hallway” that he knew was not Kerns. (App. p. 292, lines 11 – 22). According to Wilson he heard gunshots and believed the first shot hit him and knocked him unconscious. (App. p. 295, lines 2 – 11). The EMT who testified at trial said that Wilson “had a superficial laceration noted to the right side of his head.” (App. p. 174, lines 15 – 20). Wilson testified that he never left the house but regained consciousness and checked on Kerns when the police arrived. (App. p. 296, lines 6 – p. 297, lines 1-15). The parties stipulated, however, that Wilson’s bloody handprint was found on the trunk of a car parked outside behind Kerns’ house. (State’s Exhibit #59). The trial judge instructed the jury on the law of self-defense and accident. (App. pp. 644, line 1 - 648, lines 1-8).

In explaining the elements of self-defense to the jury the trial judge explained that the defendant must be without fault in bringing on the difficulty. (App. p. 644, lines 14-16). The trial judge then instructed the jury:

If the Defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true if even during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. p. 644, line 24 – p. 645, lines 1-13). There was no objection to the instruction. (App. p. 658, lines 18-21).

In the amended application for post-conviction relief Williams alleged that, “Trial counsel was ineffective in failing to object to the jury charge as to mutual combat when no evidence was presented to support such a charge.” (App. p. 796). In the amended application Williams explained, “The trial judge instructed the jury as part of her self-defense instruction, the law of mutual combat. Tr. at 644, l 24 to 645, 14. The South Carolina Supreme Court in State v. Taylor 356 S.C. 227, 589 S.E.2d 1 (2003) held such a charge should not be given in connection with self-defense, especially when no facts support the allegation.” (App. p. 797). During the PCR hearing both trial counsel admitted that they were not familiar with the Taylor case. (App. p. 857, line 15 – p. 858, lines 1-14; p. 877, lines 5-16).

In the portion of the order granting relief the PCR judge wrote, “Applicant’s attorneys were constitutionally ineffective for failing to object to the jury instruction on mutual combat when no evidence was presented at trial that would have supported such an instruction.” (App. p. 912).

The PCR judge additionally wrote:

The law of South Carolina is clear that mutual combat should generally not be charged in connection with self -defense. State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003). In Taylor the Court found that:

Although the court charged self-defense properly in Petitioner's case, that charge was negated by the court's unwarranted charge on mutual combat. We find that the court's mutual combat charge acted as a limitation on the petitioner's ability to claim self-defense, and prejudiced him by transferring the State's burden to disprove self-defense onto the Petitioner, forcing him to prove self-defense. *Id.* at 235.

The same is true in the case at bar. The mutual combat charge had the impact of negating the self-defense charge, and Mr. Williams was in fact prejudiced thereby.

Further, both trial counsel testified at the Post Conviction Relief hearing that they were not familiar with the holding in *Taylor*. This case was tried on May 13-14, 2013. *Taylor* had been the law of our state for over 10 years. A reasonable criminal defense attorney should have been knowledgeable concerning the application of *Taylor*. In addition, even if trial counsel were not familiar with *Taylor*, the evidence in this case does not support mutual combat. Giving due deference to the credibility issues, the evidence does not indicate that Mr. Wilson and Mr. Williams intended to engage in mutual combat. The evidence did not support mutual combat, and trial counsel should have objected to such a charge. Under this charge, the jury was unable to fairly consider the Defendant's claim of self-defense.

The Applicant has, therefore, met his burden of proof with respect to the Mutual Combat charge.

(App. pp. 912-913). The PCR judge correctly found that the trial lawyers were ineffective in failing to object to the jury instruction on mutual combat when there was no evidence presented to support such a charge.

Williams was entitled to a self-defense instruction and the trial judge correctly instructed the jury on the law of self-defense. Williams was also entitled to an accident instruction and the trial judge correctly instructed the jury on the law of accident. Williams testified that he acted in self-defense when Wilson approached him with a gun, they struggled over the gun and the gun accidentally discharged, presumably fatally striking Kerns. (App. pp. 535-536). As Williams and Wilson continued to struggle over the gun it accidentally discharged again, presumably grazing Wilson. (App. pp. 537-539).

In State v. White, 425 S.C. 304, 311–12, 821 S.E.2d 523, 527–28 (Ct. App. 2018), the

South Carolina Court of Appeals wrote:

“Upon request, a defendant is entitled to a jury instruction on self-defense if he has produced evidence tending to show the four elements of that defense.” Stone v. State, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988). The four elements of self-defense are as follows:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Davis, 282 S.C. at 46, 317 S.E.2d at 453. Respondent was entitled to a self-defense instruction.

In State v. Owens, 427 S.C. 325, 330-31, 831 S.E.2d 126, 128-129 (Ct. App. 2019), the

South Carolina Court of Appeals wrote:

The defense of accident (sometimes called misadventure) protects a defendant who, while acting lawfully and with due care, unintentionally causes harm to another. The defense has three elements: (1) the harm was unintentional, (2) the defendant was acting lawfully, and (3) due care was used in the handling of the weapon. See State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011); see also State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945) (“If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident.”). If the harm was caused by accident, the defendant is not criminally responsible because of the absence of criminal intent. It is precisely this lack of intent that separates accident from self-defense, for self-defense “admits an intentional killing, and sets up as justification a necessity to kill in order to save the accused from death or serious bodily harm, whereas a defense of homicide by accident denies that the killing was intentional.” State v. McDaniel, 68 S.C. 304, 317, 47 S.E. 384, 389 (1904).

The defense of accident sometimes surfaces in homicide cases, often alongside self-defense. Despite their varying levels of intent, accident and self-defense are not always mutually exclusive defenses. See State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018); State v. Williams, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (Ct. App. 2012). Of course, accident may appear in contexts far removed from self-defense. Blackstone gives the example of a man lawfully working with a hatchet when the head flies off and kills a bystander. 4 W. BLACKSTONE, COMMENTARIES *182.

The confusion in explaining the defense of accident crops up when no distinction is made between a defendant who has lawfully armed himself with a weapon in self-defense and then accidentally harms the victim (e.g., he stumbles and his finger slips and pulls the trigger) and a defendant who has lawfully armed himself with a weapon in self-defense and then intentionally harms the victim. Only the defendant in the former situation is entitled to the defense of accident, and he is also entitled to have the jury charged that his conduct in arming himself in self-defense was lawful.

Williams lawfully struggled over the gun with Wilson, in self-defense, when the gun accidentally discharged twice, once striking Kerns and once grazing Wilson. Respondent was entitled to both the self-defense instruction and the accident instruction that were properly given in this case. The defense theory was not based on a theory of “transferred self-defense” or “imperfect self-defense” but rather a combination of self-defense and accident under the facts of this case. The unwarranted mutual combat charge, however, negated both the self-defense claim as well as the accident claim.

In State v. Taylor, 356 S.C. 227, 231–32, 589 S.E.2d 1, 3 (2003), the South Carolina Supreme Court wrote:

The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years. The case law does establish that there must be “mutual intent and willingness to fight” to constitute mutual combat. State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Mutual intent is “manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.” *Id.* Whether or not mutual combat exists is significant because “the plea of self-defense is not available to one who kills another in mutual combat.” *Id.* (citing State v. Jones, 113 S.C. 134, 101 S.E. 647 (1919)). In order to claim self-defense, the defendant “must be without fault in bringing on the difficulty.” State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453

(1984). Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the “no fault” element of self-defense cannot be established.

In the present case there was no evidence presented of a mutual intent and willingness to fight. In State v. Bowers, 428 S.C. 21, 32, 832 S.E.2d 623, 629 (Ct. App. 2019), aff'd, 436 S.C. 640, 875 S.E.2d 608 (2022), the South Carolina Court of Appeals, discussing mutual combat wrote:

The antiquated doctrine was limited in its application by our supreme court in State v. Taylor. In Taylor, our supreme court required that the fight arise out of a pre-existing dispute and that the combatants be armed with deadly weapons. 356 S.C. at 233–34, 589 S.E.2d at 4. Additionally, each party must know the other is armed with a deadly weapon. Id. at 234, 589 S.E.2d at 5. Moreover, it is essential that the agreement to fight be “entered into prior to the beginning of combat,” also described as an antecedent agreement to fight. 40 C.J.S. *Homicide* § 206; accord Taylor, 356 S.C. at 233, 589 S.E.2d at 4.

In the present case there was no evidence presented that Williams and Wilson had a pre-existing dispute or prior agreement to fight. There was no evidence presented that both Williams and Wilson were armed. Williams testified that Wilson approached him outside of the home, armed with a gun, Williams acted in self-defense, struggled with Wilson over the gun when it accidentally discharged. Wilson, testified that Williams was inside the house, armed with a gun, when he started shooting at him. (App. pp. 294-295). As the courts found in Taylor and Bowers, the PCR judge correctly found there was no evidence presented of mutual combat. The trial lawyers were ineffective in failing to object to the unwarranted mutual combat charge. The record supports the PCR judge’s finding that trial counsel was ineffective in failing to object to the unwarranted mutual combat jury instruction.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations

of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. There is evidence in the record to support the PCR judge’s finding that, under the first prong of the Strickland test, the trial lawyers’ performance in failing to object to the mutual combat jury instruction fell below an objective standard of reasonableness.

2. The PCR judge correctly found that Williams was prejudiced by the trial lawyers’ deficient performance in failing to object to the mutual combat jury instruction because the unwarranted instruction negated Williams’ self-defense claim as well as his accident claim.

The unwarranted mutual combat charge negated both the self-defense claim and the accident claim. The PCR judge correctly found that Williams was prejudiced by trial counsels’ deficient performance in failing to object to the mutual combat jury instruction when there was no evidence of mutual combat. The PCR judge correctly found that the unwarranted mutual combat instruction negated Williams’ self-defense claim writing:

In Taylor the Court found that:

Although the court charged self-defense properly in Petitioner's case, that charge was negated by the court's unwarranted charge on mutual combat. We find that the court's mutual combat charge acted as a limitation on the petitioner's ability to claim self-defense, and prejudiced him by transferring the State's burden to disprove self-defense onto the Petitioner, forcing him to prove self-defense. Id. at 235.

The same is true in the case at bar. The mutual combat charge had the impact of negating the self-defense charge, and Mr. Williams was in fact prejudiced thereby.

Further, both trial counsel testified at the Post Conviction Relief hearing that they were not familiar with the holding in Taylor. This case was tried on May 13-14, 2013. Taylor had been the law of our state for over 10 years. A reasonable criminal defense attorney should have been knowledgeable concerning the application of Taylor. In additional, even if trial counsel were not familiar with Taylor, the evidence in this case does not support mutual combat. Giving due deference to the credibility issues, the evidence does not indicate that Mr. Wilson and Mr. Williams intended to engage in mutual combat. The evidence did not support mutual combat, and trial counsel should have objected to such a charge. Under this charge, the jury was unable to fairly consider the Defendant's claim of self-defense.

The Applicant has, therefore, met his burden of proof with respect to the Mutual Combat charge.

(App. pp. 912-913). The fact that Respondent relied on a combination of self-defense and accident enhances the prejudice resulting from the unwarranted mutual combat charge as the charge negates both. If Respondent had engaged in mutual combat, he would not be without fault and would not be entitled to self-defense. If Respondent was not acting lawfully in self-defense because of mutual combat, he would not be entitled to an accident defense. Respondent, however, was not engaged in mutual combat. The unwarranted mutual combat instruction negated both self-defense and accident.

In order to claim self-defense one must be without fault in bringing on the difficulty. State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). As the courts found in Taylor and Bowers, the PCR judge correctly found that the unwarranted mutual combat charge negated the self-defense claim as to the no fault requirement. The burden of proof was impermissibly

shifted to Respondent to prove self-defense when the self-defense charge was negated by the unwarranted mutual combat charge. In Campbell v. State, 441 S.C. 361, 372, 893 S.E.2d 492, 497 (Ct. App. 2023), the South Carolina Court of Appeals wrote, “In Taylor, our supreme court found that the burden of proof impermissibly shifted to the defendant to prove self-defense when a self-defense ‘charge was negated by the court's *unwarranted* charge on mutual combat.’ 356 S.C. at 235, 589 S.E.2d at 5 (emphasis added).”

Campbell is distinguished from the present case as well as from Taylor and Bowers because in Campbell the court found that the mutual combat charge was warranted writing:

In the present case, the State presented evidence to support a jury charge on mutual combat. Because the charge was warranted, Campbell's trial counsel was not deficient in failing to object to its reading alongside the circuit court's jury charge on self-defense. *See Jackson*, 384 S.C. at 38 n.5, 681 S.E.2d at 22 n.5 (clarifying that when “there [is] no evidence [a] victim [is] willing to engage in mutual combat[,]” charging mutual combat and self-defense creates unfair prejudice; however, “mutual combat and self-defense are [not] mutually exclusive” when mutual combat is supported by the evidence).

Campbell v. State, 441 S.C. at 372, 893 S.E.2d at 498. Unlike Campbell, in the present case the State failed to present evidence to support a jury charge on mutual combat. Charging mutual combat and self-defense in the present case created unfair prejudice.

The present case has the added element of an accident defense. An accident defense requires the element of acting lawfully. The unwarranted mutual combat charge, however, negated the element of acting lawfully in self-defense. As a result, the unwarranted mutual combat charge also negated the accident defense. The accident defense was unavailable without the predicate acting lawfully in self-defense. With the self-defense claim negated by the unwarranted mutual combat charge, the accident defense was also negated and the jury could not find that the shootings were accidental. As with the proper self-defense charge, the proper

accident charge did not cure the prejudice. Charging mutual combat and self-defense and accident in the present case created unfair prejudice. Williams met his burden in showing prejudice resulting from the failure to object to the unwarranted mutual combat instruction. The PCR judge correctly granted relief.

As discussed above in issue one, under the first prong of the Strickland test, the trial lawyers' performance in failing to object to the mutual combat jury instruction fell below an objective standard of reasonableness. There is evidence in the record to support the PCR judge's finding that, under the second prong of the Strickland test, the trial lawyers' performance in failing to object to the mutual combat jury instruction resulted in prejudice. The unwarranted charge negated both the self-defense claim and the defense of accident. There is a reasonable probability that, but for trial counsel's failure to object to the unwarranted mutual combat charge, the result of the proceeding would have been different. Williams demonstrated both deficient performance and prejudice.

In finding Petitioner failed to show prejudice this Court wrote:

We hold there is no reasonable probability the result of the trial would have been different had trial counsel objected to the trial court's mutual combat charge given the evidence presented. See Jackson v. State, 355 S.C. 568, 573, 586 S.E.2d 562, 565 (2003) (reversing the PCR court's grant of PCR, finding that although counsel was deficient for failing to request a self-defense charge, the instruction would not have affected the outcome of trial given the overwhelming evidence presented of Jackson's guilt). Williams testified he was served notice of a July 13, 2010 court hearing for an order of protection Kerns sought against him and for child support. He stated Kerns had told him she was afraid of him and had called the police because she said he was threatening her during an argument they had in May 2010. Booker recalled Williams leaving her and her aunt abruptly at a club in the early morning of July 10, 2010. On the recording of her 911 call, Kerns stated she believed Williams was on her front porch. Seconds later, a loud noise was heard and Kerns stopped responding to the 911 operator. Kerns was shot through the front window of her home. Taken together with Williams's testimony, the 911 call contradicted his version of events. Wilson and Son testified that Wilson was in Son's room when Williams entered Kerns's house and began shooting, contradicting Williams's testimony that Wilson approached him outside the house

with a gun and that the shooting occurred while they fought. Williams also switched cars when he returned home, led police on a high-speed chase, and stabbed himself with a knife after an officer hit his car with a patrol car to force him to stop. Additionally, Officers found bullets of the same caliber as those used in the shooting in Williams's house in Laurens. Given the evidence presented during the trial, we hold there is no reasonable probability the outcome of the trial would have been different had the trial court not given the mutual combat charge. Accordingly, we reverse the PCR court's grant of PCR.

Williams v. State, No. 2025-UP-077, at 6-7.

Counsel respectfully submits that this Court overlooked the specific impact of counsel's error on Petitioner's defenses of self-defense and accident and instead focused solely on the purported strength of the State's case. As a result of counsel's error the jury was prevented from considering both self-defense and accident. None of the State's evidence discussed by this Court above precludes a finding by the jury that Petitioner acted in self-defense and then the gun discharged accidentally.

“In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial.” Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). In Smalls the Court discussed Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998) and Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007), and wrote, “Simmons and Smith illustrate the proper consideration of the strength of the State's case in the PCR court's analysis of prejudice: it is one significant factor the court must consider—along with the specific impact of counsel's error and other relevant considerations—in determining whether the applicant has met his burden of proving prejudice.” 422 S.C. at 190, 810 S.E.2d at 844.

In discussing Simmons the Court in Smalls wrote:

Ordinarily, the existence of “overwhelming evidence” does not automatically preclude a finding of prejudice. In Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998), for example, we found counsel was deficient for not objecting when

the State in closing “improperly inject[ed] parole considerations into the jury's sentencing decision” and otherwise misstated the law regarding sentencing. 331 S.C. at 338-39, 503 S.E.2d at 167. Despite finding the evidence of Simmons' guilt was “overwhelming,” we balanced the impact of counsel's error against the strength of the State's case on the point in question, and found Simmons had proved prejudice. We explained,

[B]ecause the issue is whether the solicitor's improper argument prevented the jury from fairly considering [its sentencing options], the overwhelming evidence of petitioner's guilt does not eliminate the reasonable probability that the result of the trial would have been different had trial counsel objected to portions of the solicitor's closing argument. 331 S.C. at 340, 503 S.E.2d at 167.

422 S.C. at 189, 810 S.E.2d at 844.

As in Simmons, because the unwarranted mutual combat charge in the present case prevented the jury from considering self-defense and accident, any purported strength in the State’s evidence does not eliminate the reasonable probability that the result of the trial would have been different had trial counsel objected to the charge. Counsel respectfully seeks rehearing and affirmance of the PCR court’s grant of relief.



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ATTORNEY FOR PETITIONER

This 14th day of March, 2025.

RECEIVED

Mar 14 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

WILLIE M. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000796

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Willie M. Williams, #167044, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 14th day of March, 2025.



Kathrine H. Hudgins
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ATTORNEY FOR PETITIONER

Mar 31 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Trial Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge

Appellate Case No. 2020-000796

WILLIE MARVIN WILLIAMS,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR REHEARING

On March 5, 2025, this Court reversed the PCR Court’s grant of relief, reinstating Respondent’s convictions for murder, attempted murder and unlawful conduct towards a child. *Willie Marvin Williams v. State of South Carolina*, Unpublished Op. No. 2025-UP-077 (S.C. Ct. App. filed March 5, 2025). The PCR Court granted relief finding that trial counsel was deficient, and Williams thereby prejudiced, for failing to object to the trial court’s instruction on mutual combat. In reversing the grant of relief, this Court found that there is not a reasonable probability that the outcome of trial would have been different had the trial court not given the mutual combat charge. On March 14, 2025, Respondent filed a Petition for Rehearing arguing that the mutual combat charge prevented the jury from considering self-defense and accident as theories of defense; and that this Court erred by overlooking the specific impact of those defenses; and, instead, focused on the strength of the State’s case.

Petitioner now submits a return to the Petition for Rehearing as requested by this Court via letter on March 20, 2025.

1. This Court found that there is not a reasonable probability that the outcome of trial would have been different had the trial court not given the mutual combat instruction. The deficiency prong need not be addressed when the claim of ineffectiveness may be resolved based on lack of sufficient prejudice. *Hillerby v. State*, 431 S.C. 323, 333-334, 847 S.E.2d 500, 505 (Ct. App. 2020) citing *Strickland*, 466 U.S. 668, 697 104 S.Ct. 2052. As this Court has found, the State's evidence of guilt firmly contradicted Williams' defense theory as it relates to self-defense and accident. In essence, the State presented evidence that Williams murdered Kerns and attempted to murder Wilson, absent self-defense and without accident. Notably, the evidence supporting guilt was not undermined by the mutual combat instruction.

2. The State maintains that Williams was not entitled to a self-defense instruction, and that there could be no reasonable probability of a different result when the overwhelming evidence fails to show self-defense - and especially so where the PCR court finds, in a separate part of the order, that Williams's "explanation of the events at the victim's home was not credible in light of the evidence." (App. 908). See *Felder v. State*, 427 S.C. 518, 527, 832 S.E.2d 591, 595 (2019) ("the 'PCR court should consider the specific impact counsel's error had on the outcome' and 'evaluate 'the strength of the State's case in light of all the evidence presented to the jury.'") (quoting *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018)).

3. At any rate, the mutual combat instruction did not prevent the jury from considering the self-defense theory that the gun accidentally discharged, killing Kerns, when

Williams was struggling over the gun with Wilson.¹ The mutual combat instruction specified that “*If the Defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be in self-defense,*” and that “*there must be mutual intent and willingness to fight,*” and “*it must be shown that both parties were armed with a deadly weapon.*” (App. 644-645). (emphasis added). There is no testimony to suggest that Wilson and Williams had a “mutual intent and willingness to fight,” as the trial court instructed that the evidence must indicate. (App. 644-645). Thus, reasonably considering the plain instruction, there was no impact.

4. Further, the evidence supports the jury’s verdict. Specifically, as this Court references in the opinion, Kerns’ and Williams’ recent history of domestic incidents and the upcoming court hearings in which Kerns’ was seeking a protection order from Williams and child support. (App. 80-82, 285-287, 290-295, 300-301, 313, 340, 508-513, 554-558, 564, 574). This Court also references Kerns’ 911 call where she told the operator that she believed Williams’ was at her house, and that an order of protection against him is pending. On the 911 tape played for the jury, Kerns told Williams to get away from her home, then a loud noise indicative of Kerns’ collapse due to being shot was heard. (State’s Ex. 1 [911 call], App. 67-82, 540, 623). This Court noted that taken with Williams’ testimony, the 911 call contradicted his version of events. This Court also noted that Wilson and Son testified that Wilson was in the son’s room when Williams’ entered the home and began shooting which was also inconsistent

¹ As the trial judge noted, there was no evidence of accident. Accident was charged only on the basis that Williams said “accident” in his testimony. (App. 601). As a matter of law, though, the evidence could not support accident as he testified that he never had the weapon. *See State v. Owens*, 427 S.C. 325, 334, 831 S.E.2d 126, 130 (Ct. App. 2019), *aff’d*, 433 S.C. 482, 860 S.E.2d 357 (2021) (“a defendant can be acting lawfully, even if he is in unlawful possession of a weapon, if you find he was entitled to arm himself in self-defense and the victim was shot by accident by the unintentional discharge of the weapon.”).

with Williams' version of events. (App. 92-104, 291-297, 529-540). Additionally, this Court references Williams' flight and avoidance of officers which ended with Williams' stabbing himself after a patrol car hit his vehicle to get him to stop. (App. 154-158). Lastly, this Court references the forensic evidence which showed the bullets used in the shooting matched those found at Williams' house. (App. 341, 360-364, 404-417). In essence, the jurors decided between two different stories. Nothing in the mutual combat instruction impaired that choice.

5. When the entirety of the record is considered, there is simply no reasonable possibility of a different result. Williams fails to show any error in this Court's opinion.

CONCLUSION

For all the above reasons, Respondent requests this Court to deny the petition for rehearing.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 31, 2025
Columbia, South Carolina

RECEIVED²⁹

Mar 31 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Trial Judge
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Appellate Case No. 2020-000796

WILLIE MARVIN WILLIAMS,

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v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I, **Kaylee C. Kemp**, attorney for Respondent, hereby certify that the **Return to Petition for Rehearing** has been forwarded to Petitioner's counsel, Katherine Hudgins, Esq., and Chris Stock, Administrative Coordinator, via email today, March 31, 2025, to khudgins@sccid.sc.gov and cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 31st day of March 2025.

s/ Kaylee C. Kemp
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The South Carolina Court of Appeals

Willie Marvin Williams, Respondent-Petitioner,

v.

State of South Carolina, Petitioner-Respondent.

Appellate Case No. 2020-000796

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Kathrine Haggard Hudgins, Esquire

Melody Jane Brown, Esquire

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

FILED
Apr 14 2025

Kaylee Christene Kemp, Esquire
The Honorable Robin B. Stilwell