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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

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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 *Willie Marvin Williams v. State of South Carolina*, Unpublished Op.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

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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
KAYLEE C. KEMP
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Kaylee Kemp

From: Kaylee Kemp
Sent: Monday, March 31, 2025 7:29 PM
To: khudgins@sccid.sc.gov; Stock, Chris
Cc: Brandy Rankin; Melody Brown; Angela Brown
Subject: The State v. Willie M. Williams - Return to Petition for Rehearing & Proof of Service - Monday, March 31, 2025
Attachments: Proof of Service - Willie M. Williams.pdf; Williams, Willie - Return to Petition for Rehearing - March 31, 2025.pdf

Good evening –

Attached is the Return to Petition for Rehearing in the matter of Willie M. Williams along with the Proof of Service. This will be sent for filing with the Court of Appeals today.

Thank you!

Kind regards,

Kaylee C. Kemp, Assistant Attorney General
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