

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Sep 24 2026
SC Court of Appeals

Appeal from Charleston County

Honorable Bentley Price, Circuit Court Judge

Opinion No. 2026-UP-436

JOSEPH TODD ROWLAND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2021-00089

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Joseph Todd Rowland, respectfully requests this Court grant rehearing. On September 16, 2026, this Court reversed the relief granted by the post-conviction relief court. Joseph T. Rowland v. State, Op. No. 2026-UP-436 (S.C. Ct. App. filed September 16, 2026). Petitioner respectfully submits this Court overlooked the fact that trial counsel failed to argue critical grounds in support of the motion to suppress items seized as a result of a search warrant lacking probable cause. The deficiency resulted in prejudice. Respectfully, if, at the suppression hearing, trial counsel had properly objected to testimony about a man on a bicycle because the information was not presented to the

magistrate, argued the tips were anonymous and undated, argued there was no information about the reliability of the statement of the driver of the blue car, argued that the affidavit characterized a single “hand to hand” transaction observed by the officers as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money, called Petitioner’s twin brother to deny supplemental information the officer provided the magistrate in support of probable cause, and argued the officer failed to leave a copy of the affidavit in support of the search warrant at the residence as required by S.C. Code §17-13-150, there is a reasonable probability the result of the proceeding would have been different. Respectfully, all these facts support the PCR’s judge’s finding of prejudicial deficient performance and the factual findings by the PCR judge require deference by this Court.

Trial counsel’s challenge to the affidavit in support of the search warrant was deficient, so much that trial counsel appears to concede that probable cause existed. (App. p. 73, lines 5-6). In reversing the grant of relief by the PCR court, this Court wrote, “Even assuming trial counsel was deficient for failing to argue additional grounds to support the motion to suppress, we hold Rowland was not prejudiced by this deficiency because there is no reasonable probability that had trial counsel argued these grounds the result of the suppression hearing would have been different.” Joseph T. Rowland, Respondent, v. State of S.C., Petitioner., No. 2021-000089, 2026 WL 2740381, at *6 (S.C. Ct. App. Sept. 16, 2026). Respectfully, as discussed above, this finding overlooks critical issues trial counsel failed to raise in challenging the affidavit as lacking probable cause.

This Court found that the affidavit established probable cause because:

Specifically, the affidavit provided police (1) had been conducting an investigation on 31 Woodleaf and Rowland for more than one year regarding narcotics; (2) received several complaints over the preceding six months regarding narcotics being sold at 31 Woodleaf; (3) surveilled 31 Woodleaf and

observed a vehicle drive up and park in front of it, Rowland exit the home, reach inside the vehicle, and engage in a, or what appeared to be a, hand-to-hand transaction, reenter the home shortly thereafter, and the vehicle leave; and (4) conducted a traffic stop on the vehicle, located drugs in the vehicle, and obtained a written statement from the driver confirming the drug transaction.

Joseph T. Rowland, Petitioner, v. State of S.C., Petitioner., No. 2021-000089, 2026 WL 2740381, at *7 (S.C. Ct. App. Sept. 16, 2026). Respectfully, this Court overlooked the fact that all four factors discussed above should have been challenged. If challenged, there is a reasonable probability the trial judge's ruling would have been different. Trial counsel should have argued the investigation and anonymous undated complaints alone do not provide probable cause. Trial counsel should have challenged the affidavit because it characterized a single "hand to hand" transaction observed by the officers as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money does not provide probable cause. Trial counsel should have challenged the affidavit for not containing any other information about the driver of the vehicle, a blue car, his veracity or his reliability. Importantly, this was not a controlled buy where the officers could verify that drugs were not present prior to the observed transaction with Petitioner. The anonymous undated tips, the hand to hand-to-hand transaction, and the unreliable statement of the driver of the blue car taken together are not sufficient to provide the magistrate with probable cause to believe drugs would be found inside the residence. Impeaching the officer with the brother's testimony and the officer's failure to leave a copy of the affidavit were additional facts considered by the PCR court in support of granting relief.

The present case is distinguished from Kinloch where the South Carolina Supreme Court found that the search warrant was supported by probable cause writing:

Although Gentile is factually similar, it is not dispositive. Rather, here, unlike Gentile, the facts set forth in the affidavit establish that law enforcement received numerous complaints over the course of several months regarding drug activity at 609 A. After receiving those complaints, but prior to seeking a search warrant, law enforcement observed activity consistent with drug activity when they observed parties conducting “hand-to-hand” transactions outside 609 A and saw a man counting money as he returned to the residence. Based, in part, on this observation, law enforcement followed the man they had seen outside 609 A to a nearby gas station, where they saw this man hand another unknown man, later identified as Burns, a clear plastic wrapping in exchange for money. When law enforcement approached Burns, he dropped the clear plastic baggy, the contents of which tested positive for heroin.

Kinloch, 410 S.C. at 617–18, 767 S.E.2d at 156. In the present case the affidavit references a single, purported hand-to-hand transaction rather than the several transactions observed in Kinloch. Additionally, there is no reference to the exchange of money in the present case as in Kinloch.

If trial counsel had competently challenged the affidavit in support of the search warrant, there is a reasonable probability the trial court would have found the affidavit lacked sufficient probable cause. Additionally, however, trial counsel failed to renew the objection, as minimal as it was, when at trial the State introduced evidence seized pursuant to a search warrant lacking probable cause. On direct appeal one of the issues argued by Respondent was that, “The trial court erred in denying Appellant’s motion to suppress the drug evidence on the ground the search warrant was not supported by probable cause.” (App. p. 601, pp. 608-615). In an unpublished opinion the South Carolina Court of Appeals found the issue was not preserved. State v. Rowland, Op. No. 2017-UP-225 (S.C. Ct.App. filed May 24, 2017).(App. pp. 670-671). In the amended PCR application Respondent alleged that, “Trial counsel was ineffective for not renewing the objections he raised during the pre-trial suppression hearing by making contemporaneous objection when the drug evidence was introduced at trial. By failing to make this contemporaneous object, the issues regarding the warrant’s inaccurate address and the lack

of probable cause were not preserved for appellate review.” (Supp. App. p. 329). The record reflects that trial counsel did not renew the bare minimal objection made during the suppression hearing when the drugs, gun and other items seized pursuant to the search warrant were introduced in evidence at trial. Respectfully, because this Court overlooked the fact that trial counsel failed to argue critical grounds in support of the motion to suppress items seized as a result of a search warrant lacking probable cause, trial counsel was prejudiced by trial counsel’s failure to preserve the issue for appellate review.

In the order granting relief, the PCR judge addressed the items introduced at trial without objection and found counsel deficient for failing to renew the objections. (App. p. 1622). The PCR judge then wrote, “Other than the evidence seized during the search warrant there was little other evidence of guilt. The court therefore finds that had trial counsel properly preserved the issue for appellate review there is a reasonable probability the Applicant’s appeal would have been successful.” (App. pp. 1622-1623). The PCR judge correctly found prejudicial deficient performance.

With regard to deficient performance, in McHam v. State, 404 S.C. 465, 474, 746 S.E.2d 41, 46 (2013), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), the South Carolina Supreme Court wrote:

Although the PCR judge found trial counsel was not deficient, it is clear from the record that counsel did not object on Fourth Amendment grounds when the drug evidence was admitted at trial. At the PCR hearing, trial counsel was forthright in acknowledging that he failed to renew his objection. When asked if he objected to the drug evidence when it was introduced at trial, counsel admitted: “Going back through the transcript it doesn't look like I did object to or at least preserve my objection during the course of the trial.” Counsel stated, “And if that were the case, and it wasn't preserved, then he would not have been able to argue the most critical piece of his trial, which was the ... denial of the suppression motion.” Counsel agreed with the characterization by McHam's PCR attorney that McHam “basically [] won or lost the case on that motion of suppression[.]” Contrary to the PCR judge's determination, we find counsel's failure to renew the Fourth

Amendment objection constituted deficient performance that satisfies the first prong of the *Strickland* test. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (“The proper measure of counsel's performance remains whether he has provided representation within the range of competence required by attorneys in criminal cases.”).

As in McHam, trial counsel in the present case was deficient for not renewing the objections to the search warrant lacking probable cause. The present case is distinguished from McHam with regard to the prejudice prong of *Strickland* because, as discussed above, trial counsel was not only deficient in failing to renew the objections to the search warrant, he was also deficient in failing to adequately challenge the search warrant as lacking probable cause. Petitioner established prejudice because if the search warrant had been adequately challenged, and the issue preserved, there is a reasonable probability the result of the proceedings would have been different.

As to trial counsel’s failure to call Petitioner’s father as a witness at trial to testify the gun found belonged to him, this Court found no prejudice because “. . . even if Father had testified at trial that he owned the handgun, this did not negate evidence that Rowland was in constructive possession of the handgun.” Respectfully, the determination of whether Petitioner was in constructive possession of the gun is a factual determination. “Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018) (n. 2 omitted).

In the order granting relief the PCR judge wrote, “Additionally, the Court finds had Leroy Rowland testified before the jury that he was the owner of the gun found at his residence, there is a reasonable probability that the jury would have acquitted Applicant on the indictment

under S.C. Code §16-23-490 (possession of a weapon during the commission of a violent crime). (App. pp. 1623-1624). Pursuant to Strickland the PCR judge correctly found that trial counsel was ineffective in failing to call Leroy Howland to testify that the gun belonged to him. There is evidence in the record to support the finding of the PCR judge. Petitioner met his burden of demonstrating deficient performance and prejudice.

Finally, with regard to the after discovered evidence, Petitioner respectfully submits this Court misapprehended the testimony in finding the “. . . evidence did not support the PCR court’s credibility finding and we need not defer to such finding.” Respectfully, this Court overlooked State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011), where this Court wrote:

The credibility of newly-discovered evidence is for the trial court to determine. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). Only the trial court and not the appellate court has the power to weigh the evidence; the trial court's judgment will not be disturbed except for error of law or abuse of discretion. *Id.* “In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.” State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). “On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.” *Id.*

The PCR court correctly treated the testimony of Petitioner’s twin brother (John Rowland) claiming ownership of the drugs found pursuant to the search warrant as after discovered evidence because, even though trial counsel was aware of the potential testimony prior to trial, trial counsel was not certain the twin brother would admit to ownership of the drugs at the time of trial.

Respectfully, based on the fact that this Court overlooked critical issues trial counsel failed to raise in challenging the affidavit as lacking probable cause, and this Court’s failure to

defer to the factual findings of the PCR court, Petitioner respectfully seeks rehearing and affirmance of the PCR court's grant of relief.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 24th day of September, 2026.

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APPELLATE CASE NO. 2021-00089

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 Zachary W. Jones, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Joseph Todd Rowland, #290065, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 24th day of September, 2026.



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ATTORNEY FOR *

Stock, Chris

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Sep 24 2026

From: Stock, Chris
Sent: Thursday, September 24, 2026 4:27 PM
To: Zachary Jones; Vickie Hall; Grace Sommer
Cc: Hudgins, Kathrine
Subject: 2021-000089 - Joseph T. Rowland - Petition for Rehearing
Attachments: 2021-000089 - Joseph T. Rowland - Petition for Rehearing.pdf

SC Court of Appeals

Mr. Jones,

Please find attached for service the Petition for Rehearing for Joseph Todd Rowland's appeal which will be filed today with the Court of Appeals.

Thank you,

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330