

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM Horry COUNTY  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

---

Appellate Case No. 2013-001577

---

RECEIVED

MAY 19 2014

S.C. Supreme Court

Jimmy Lee Williams, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

---

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

QUESTION PRESENTED ..... 1

STATEMENT OF THE CASE.....2

ARGUMENT .....3

    I. Probative evidence supports the PCR judge’s finding trial counsel was  
    not ineffective for pursuing a theory of self-defense .....3

CONCLUSION .....8

## **QUESTION PRESENTED**

Did the PCR judge properly find trial counsel was not ineffective for pursuing a theory of self-defense where trial counsel discussed this trial strategy with Applicant, but Applicant refused to take the stand to present evidence of self-defense after leading trial counsel to believe he would?

## STATEMENT OF THE CASE

In May 2008, the Horry County Grand Jury indicted Jimmy Lee Williams (“Petitioner”) for murder in indictment number 2008-GS-26-1689. (App. pp. 1-2). The State tried Petitioner and a co-defendant before the Honorable Edward B. Cottingham (“the trial judge”) and a jury during the November 10, 2008, term of Horry County General Sessions court. (Supp. App. p. 69). R. Paul Taylor, Esquire, (“trial counsel”) represented Petitioner at trial. (Supp. App. p. 69). On November 14, 2008, the jury found Petitioner guilty as indicted. (Supp. App. p. 446). Judge Cottingham sentenced Petitioner to thirty (30) years imprisonment. (App. p. 3).

Trial counsel filed a timely notice of appeal and Joseph L. Savitz, III, Esquire, perfected Petitioner’s appeal. The Court of Appeals affirmed Applicant’s conviction. State v. Williams, Op. No. 2010-UP-532 (S.C. Ct. App. filed December 14, 2010).

Petitioner filed an application for post-conviction relief (“PCR”) on December 2, 2011. (App. pp. 4). John T. Mobley, Esquire, (“PCR counsel”) represent Petitioner. (App. pp. 4). The Honorable Larry B. Hyman (“the PCR judge”) convened a hearing on the application at the Horry County Courthouse on April 23, 2013. (App. p. 17). Petitioner was present and represented by PCR counsel. (App. p. 17). Assistant Attorney General T. Andrew Johnson, Esquire, represented Respondent. (App. p. 17). The PCR court denied relief in an order dated June 4, 2013, and filed June 17, 2013. (App. pp. 10).

## ARGUMENT

### **I. Probative evidence supports the PCR judge's finding trial counsel was not ineffective for pursuing a theory of self-defense.**

Petitioner asserts the PCR court erred by finding trial counsel was not ineffective in using a self-defense strategy where it conflicted with Petitioner exercising his right to not testify. However, probative evidence exists to support the PCR court's findings. Therefore, Respondent submits the PCR court properly denied Petitioner's application.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

On appeal, this Court must affirm the circuit court's denial of post-conviction relief when there is probative evidence to support the findings of the circuit court. Wolfe v. State, 326 S.C. 158, 163, 485 S.E.2d 367, 369 (1997) (citing McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995); Cherry, 300 S.C. at 115, 386 S.E.2d at 624)).

At the PCR hearing, Petitioner testified trial counsel advised him to pursue a self-defense strategy, but he disagreed after reviewing the State's discovery response. (App. p. 57, line 24-p. 58, line 3). Petitioner testified he did not believe the State had sufficient evidence to convict him. (App. p. 48, lines 4-7). Petitioner claimed he told his attorney he was not going to testify because he did not agree with the self-defense strategy. (App. p. 61, lines 3-8).

In complete contrast to Applicant's story, trial counsel testified he believed self-defense was the only theory that explained the overwhelming circumstantial evidence against Applicant. (App. p. 43, lines 8-19; p. 24, lines 5-16). Witnesses heard Petitioner threaten the victim shortly before driving to the victim's house. (App. p. 26, line 10-p. 37, line 2). The police found a firearm behind Petitioner's house that was linked to shell casings found in Petitioner's car. (App. p. 24, lines 5-16). Based on this evidence, trial

counsel immediately advised Petitioner they should pursue a self-defense strategy under the theory the victim was attempting to shoot Petitioner when Petitioner fired the fatal shot. (App. p. 23, lines 2-11). Trial counsel testified he discussed this theory with Petitioner. (App. p. 43, lines 20-21). During those discussions, Petitioner admitted to firing at the victim. (App. p. 24, line 24). Petitioner agreed with trial counsel's strategy of arguing self-defense. (App. p. 43, line 23). Trial counsel testified that Petitioner never wanted to pursue any strategy other than self-defense. (App. p. 44, lines 2-14). Trial counsel also testified he explained to Petitioner he would have to testify in support of the self-defense theory. (App. p. 45, lines 17-21). However, Applicant changed his mind once it came time to present his case. (App. p. 45, lines 23-25). Trial counsel was not prepared for Petitioner to change his mind and not testify. (App. p. 46, line 11-p. 47, line 6). Petitioner refused to take the stand even after trial counsel explained his testimony was necessary for the self-defense claim. (App. p. 49, line 19-p. 50, line 2).

The PCR judge properly found trial counsel's strategy of pursuing a self-defense theory was reasonable under the circumstances. The inescapable inference from the State's overwhelming evidence is that Petitioner was involved in the shooting of the victim. The sole way to mitigate the damage from this evidence was to convince the jury Petitioner acted in self-defense. To do so under the facts of this case, Petitioner had to take the stand to give his version of events. See Patterson v. State, 253 S.C. 382, 386-87, 171 S.E.2d 235, 237 (1969) (defendant normally required to take the stand to prove self-defense). Therefore, trial counsel articulated a valid strategy for advising Petitioner to take the stand and testify. Id. at 387, 171 S.E.2d 237; see also Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992)).

Furthermore, the PCR judge also properly found Petitioner sabotaged his own defense by not taking the stand. Trial counsel and Petitioner gave vastly diverging account of their discussion of the self-defense strategy. The PCR judge found trial counsel's version of events credible, and Petitioner's version of events not credible.<sup>1</sup> Under trial counsel's version of events, Petitioner understood he must take the stand to prove self-defense and agreed to that strategy. However, he unexpectedly changed his mind after the State rested its case. Petitioner was well aware of the risks of not testifying. Furthermore, the trial judge had a lengthy discussion with trial counsel and Petitioner about the lack of evidence of self-defense if Petitioner did not testify. (Supp. App. p. 363, line 16-p. 364, line 10). The trial judge gave Petitioner an opportunity to present evidence of self-defense. (Supp. App. p. 366, lines 19-21). However, Applicant refused to take the stand. (Supp. App. p. 369, lines 5-7).

Trial counsel properly consulted with Petitioner about the fact he would have to testify to present their self-defense theory. See Florida v. Nixon, 543 U.S. 175, 187 (2004) (counsel required to consult with and receive consent from defendant on strategic decisions affecting the right to testify). Petitioner was fully advised of that strategy and consented to it up until the last second. Petitioner's sudden refusal to cooperate does not render trial counsel's performance ineffective where trial counsel had every expectation Petitioner would testify. Id. at 189. Therefore, the PCR judge properly found Petitioner's decision to sabotage his own defense is not grounds for relief.

The record contains significant probative evidence trial counsel acted reasonably and within professional norms when implementing Petitioner's trial strategy. Ultimately,

---

<sup>1</sup> See Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993) (this Court gives great deference to a PCR judge's credibility findings).

Petitioner's decision to change his mind at the eleventh hour frustrated the trial strategy he and trial counsel initially agreed upon. In light of Petitioner's decision not to cooperate, the PCR court did not err in denying the application for post-conviction relief. Wolfe, 326 S.C. at 163, 485 S.E.2d at 369.

**CONCLUSION**

For the foregoing reasons, Respondent respectfully requests this Court deny the  
Petition for Writ of Certiorari.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

By:   
ATTORNEYS FOR RESPONDENT

May 19, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Horry County

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

---

JIMMY LEE WILLIAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

---

**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

John Terrence Mobley, Esquire  
925 Calhoun St.  
Columbia, SC 29201

This 19<sup>th</sup> day of May, 2014

  
NORMA BIGBEE  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

May 19, 2014

RECEIVED

MAY 19 2014

S.C. Supreme Court

**VIA HAND DELIVERY**

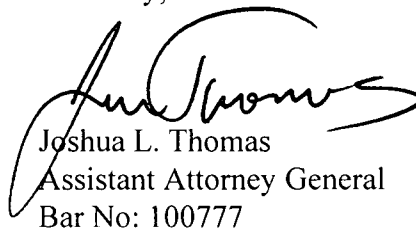
The Honorable Daniel E. Shearouse  
Clerk of Court, South Carolina Supreme Court  
Post Office Box 11330  
Columbia SC 29211

**RE: Jimmy Lee Williams v. State of South Carolina**  
**Appellate Case No: 2013-001577**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,



Joshua L. Thomas  
Assistant Attorney General  
Bar No: 100777

JLT/nb  
Enclosures

cc: John T. Mobley, Esquire (copies)