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STATE OF SOUTH CAROLINA  
In The Supreme Court

**S.C. Supreme Court**

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2015-000105

Alwin Jones, ..... Petitioner,

v.

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

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER  
Assistant Attorney General  
S.C. Bar No. 102100

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

ATTORNEYS FOR PETITIONER

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## **QUESTIONS PRESENTED**

I. Is there any probative evidence to support the PCR Court's finding that counsel was not ineffective for failing to object to the qualifications of the ministerial reporter to issue an arrest warrant?

## STATEMENT OF THE CASE

In July 1998, the Lexington County Grand Jury indicted Petitioner for armed robbery, criminal conspiracy, possession of a firearm or knife during commission of a violent crime, unlawful possession of a pistol by person under the age of twenty-one, burglary – second degree, burglary – first degree, and petit larceny. On August 26, 1999, Petitioner pled guilty to three counts of burglary – first degree (1999-GS-32-2460; -2472; -2473), three counts of burglary – second degree (1999-GS-32-2458; -2459; 2471) and armed robbery (1999-GS-32-2654).<sup>1</sup> Cam Littlejohn Esq. represented Petitioner. The Honorable William P. Keesley sentenced Petitioner to imprisonment for thirty (30) years for each count of burglary – first degree; fifteen (15) years for each count of burglary – second degree; and thirty (30) years for armed robbery. These sentences were to be served concurrently. Petitioner did not appeal his plea or sentences.

Petitioner filed his *first* PCR application on December 28, 1999 (1999-CP-32-3546). Petitioner alleged that he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. False representations, from trial or plea counsel

An evidentiary hearing was held before the Honorable J.C. Nicholson, Jr. at which Petitioner was present and represented by Elizabeth Fullwood, Esq. By Order dated July 31, 2001, Judge Nicholson denied and dismissed the Application. By Order filed May 21, 2001, Judge Nicholson denied Petitioner's motion for relief from judgement. A timely notice of appeal was filed on Applicant's behalf, followed by a Johnson Petition for Writ of Certiorari. On April 18, 2002, the South Carolina Supreme Court denied the Petition and the Remittitur was issued on May 6, 2002.

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<sup>1</sup> For matters relating to the most current PCR, and this resulting appeal, Petitioner only challenges (1999-GS-32-2654).

Petitioner filed a *second* PCR application on July 25, 2002 (2002-CP-32-2531). Petitioner alleged he was being held unlawfully for the following reasons:

1. Subject Matter Jurisdiction
2. Involuntary Guilty Plea
3. Ineffective Assistance of Counsel
4. Newly Discovered Evidence
5. Brady Violation
6. Due Process Violation
7. Fourth, Fifth, and Sixth Amendment Violations

Respondent moved to dismiss the application, and on February 24, 2004, before the Honorable Marc H. Westbrook. Petitioner was present at the hearing and represented by Lori Murray, Esq. By Order dated March 14, 2004, Judge Westbrook denied and dismissed the application as successive and barred by the statute of limitations. A timely notice of appeal filed on Petitioner's behalf, followed by a Johnson Petition for Writ of Certiorari. By Order dated September 7, 2005, the South Carolina Supreme Court denied the Petition and granted counsel's request to withdraw. The Remittitur was issued on September 23, 2005.

Petitioner filed a *third* PCR application on September 1, 2006 (2006-CP-32-3178). Petitioner alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Counsel's failure to submit evidence into courts, raise particular arguments and to follow-up on transcript."

The Honorable James W. Johnson issued a Conditional Order of Dismissal dated April 26, 2007, finding the application successive and barred by the statute of limitations. Judge Johnson denied and dismissed the application by Final Order filed June 27, 2007. Petitioner did not appeal the dismissal.

Petitioner filed his *fourth and current* PCR application on March 6, 2012. In his application, Petitioner alleged he is being held unlawfully for the following reason:

1. Newly Discovered Evidence – Discovered on March 17, 2011, that John C. Sharpe who signed arrest warrant as issuing Judge lacked the authority to do so.

Respondent made its return on June 12, 2012, requesting the application be summarily dismissed as successive and barred by the statute of limitations, as well as under the doctrine of laches. A hearing was held on August 16, 2013, at the Lexington County Courthouse before the Honorable Edgar W. Dickson. Petitioner was present and represented by Tommy Thomas, Esq. and Tristan Shaffer, Esq. By Order dated July 14, 2014, Judge Dickson denied and dismissed the application with Prejudice. This appeal follows.

## STANDARD OF REVIEW

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)). 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)).

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 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, 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial.

Hill v. Lockhart, 474 U.S. 52 (1985).

## ARGUMENT

### **I. There is probative evidence in the record to support the PCR Court's finding that counsel was not ineffective in failing to object to the qualifications of the ministerial recorder to issue and arrest warrant**

Petitioner argues the PCR Court erred in finding that his arrest was valid, alleging that the arrest warrant was invalid because "the man who signed the warrant, John Sharpe [the ministerial recorder], was not a proper ministerial recorder in Cayce." Petitioner's PWC p.6. The Honorable Edgar W. Dickson (the PCR Judge) fully addressed the issue in the "Findings of Fact and Conclusions of Law" section of his Order of Dismissal filed July 17, 2014. In his Order, Judge Dickson found that "in the light most favorable to [Petitioner] no violation has been established" in regard to the merits of Petitioner's improper recorder claim. App. p.83. Petitioner further contends that the ministerial recorder, even if properly serving as such, was barred from signing Petitioner's arrest warrant due to his inability to maintain the neutral and detached status required by Shadwick v. City of Tampa, 407 U.S. 345, 92 S.Ct. 2119 (1972). Petitioner's PWC p.8. In regards to this claim, the PCR judge found that "[t]here is no evidence that [the ministerial recorder] handled any money associated with [Petitioner's] case." App. p.83. Petitioner argues that he was prejudiced by his arrest based on an invalid warrant due to Petitioner's confession of guilt following his arrest. Petitioner's PWC p.6. The PCR Judge found Petitioner's belief regarding a better plea deal had he not confessed was nothing more than "mere speculation." App. p.84. Respondent submits that Petitioner's arguments are accordingly without merit, and that ample probative evidence exists in support of the PCR Court's findings.

### **Ministerial Recorder's Qualifications**

Respondent submits there is ample probative evidence in support of the PCR Court's finding that Petitioner failed to meet his burden to show his arrest warrant was invalid. In 1980, the Legislature enacted S.C. Code §14-25-115, allowing a city council to appoint "one or more

full-time or part-time ministerial recorders, who shall hold office at the pleasure of the counsel.”<sup>2</sup> Ministerial recorders had several powers, including issuance of arrest warrants. Under §14-25-15 (1980), ministerial recorders were required to “take and subscribe the oath of office” prescribed by the South Carolina Constitution. Educational requirements were not codified until 2000 when S.C. Code §14-25-15 was amended to add sections (B) – (G) (2000 Act No. 394, §2, effective August 4, 2000). Until 2000, the only authority outlining education requirements was found in South Carolina Supreme Court Order 1994-05-03-01, dated May 3, 1994 and effective January 1, 1995. The order states that “[f]ailure to comply with this order shall subject the party so failing to penalties for contempt of court.” No other penalty, such as vacating office or invalidation of signatures, is mentioned. The warrant Petitioner claims is deficient was issued in 1998, at which time there were no reporting rules on the annual education requirements of ministerial recorders.

Petitioner has not presented any evidence that the ministerial recorder was not in compliance with the rules at the time he issued the warrant. Moreover, there is probative evidence in the record indicating he was in compliance. Evidence was introduced in the form of a previous PCR transcript in which the ministerial recorder that issued Petitioner’s arrest warrant testified that he attended classes at the criminal justice academy as he “received notification . . . in the form of mailers.” (App. p. 158-159). While the ministerial reported testified that he had attended classes during his tenure as he “received notification . . . in the form of mailers,” he was unable to specifically recall attending any seminars or classes in 1997.<sup>3</sup> Id. Respondent submits this inability to remember is understandable, given the roughly ten years that had passed in the

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<sup>2</sup> Prior to 1980, when Sharpe was initially appointed, the office of ministerial recorder was covered by S.C. Code §§14-25-310 and – 320 (1976). These sections similarly permitted a city council to establish the office of ministerial recorder.

<sup>3</sup> The ministerial recorder was also unable to remember the specific circumstances surrounding his issuance of the search warrant.

interim. Petitioner's attempt to construe this testimony as ambiguous, and then resolve that ambiguity in his favor, is disingenuous at best, and entirely unsupported by the record. Certiorari is therefore unwarranted and this petition should be denied.

**The Ministerial Recorder was not Involved in Law Enforcement Activities**

Respondent further submits there is ample probative evidence in the record supporting the PCR Court's finding that Petitioner did not meet his burden in showing the ministerial recorder that issued his arrest warrant was not "neutral and detached."

An official issuing a warrant must meet two tests: he must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search. Shadwick v. City of Tampa, 407 U.S. 345, 350, 92 S.Ct. 2119, 2123 (1972). "The nucleus of the neutrality requirement is that the issuing officer not be functioning in a capacity charged with the duty of investigating or prosecuting crimes." State v. Dunbar, 361 S.C. 240, 250, 603 S.E.2d 615, 621 (Ct. App. 2004) (*quoting* State v. Sachs, 264 S.C. 541, 553-54, 216 S.E.2d 501, 507 (1975)).

Petitioner argues that because the ministerial recorder was also the city treasurer for the city of Cayce, he "assisted law enforcement as custodian of all currency evidence that was seized by the Cayce Police Department." Respondent submits the PCR Court correctly ruled that, "as City Treasurer/Clerk, [the ministerial recorder] is removed from the prosecutor and police, not under their employ or influence." App. p. 83. Furthermore, as the PCR Judge correctly noted, there was "no evidence that [the ministerial recorder] handled any money associated with [Petitioner's] case." Id.<sup>4</sup> Accordingly, this claim is without merit and certiorari should be denied.

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<sup>4</sup> The testimony Petitioner cites to is not included in the Appendix.

**Even in the event that Petitioner's claims are meritorious, Petitioner did not suffer any  
prejudice as a result.**

Finally, there is substantial probative evidence in the record to support the PCR Court's findings on prejudice. In order to show prejudice on post-conviction relief, an applicant must show that but for counsel's unprofessional errors, the outcome of the proceeding would have been different. Cherry at 117-18, 386 S.E.2d at 625. With respect to a guilty plea, he must show that he would have refused to plead guilty and proceeded to trial. [cite]. Petitioner claims, as he did in his application, that he would not have confessed to armed robbery had he known the arrest warrant was defective, and that he could have secured a more favorable plea offer regarding his remaining charges had he not been arrested for armed robbery. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent would also bring to this Court's attention that Applicant has not contested that his arrest was supported by probable cause, and that the PCR Court found the evidence was supported by probable cause. (App. p. 83). Accordingly, it appears that Applicant would have eventually been arrested and given the same confession even if the municipal court judge, rather than the ministerial recorder, had signed the arrest warrant.

There is also probative evidence to support the PCR Court's finding that Applicant's claim that he lost a "very good plea offer" as a result of the arrest warrant was too speculative to serve as a basis for any sort of prejudice finding. App. p. 84. The Appendix contains no testimony to the effect of any other plea offers. Moreover, an indictment could have been sought even without an arrest warrant – presumably triggering the same consequences as far as any plea offer goes. (App. p. 83-84) (*citing* Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968)).

Finally, it is not entirely clear that Petitioner's confession would have been suppressed even if his arrest warrant were deficient. See, e.g., Narcisco v. State, 397 S.C. 24, 31, 723 S.E.2d 369 (2012) ("Police practices trigger the harsh sanction of exclusion only when they are deliberate enough to yield 'meaningful deterrence' and culpable enough to be 'worth the price paid by the justice system'") (*quoting* Herring v. United States, 555 U.S. 135, 129 S.Ct. 695 (2009)); Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185 (1995) (finding application of exclusionary rule was inappropriate where arresting officer believed in good faith, based on clerical error, that quashed arrest warrant was valid).

For the foregoing reasons, the PCR Court's findings on this matter should be left standing and this petition should be denied.

**CONCLUSION**

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

Respectfully submitted,

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER  
Staff Attorney  
S.C. Bar No. 102100

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

By: 

ATTORNEYS FOR RESPONDENT

December 30, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM LEXINGTON COUNTY  
The Honorable Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2015-000105

Alwin Jones, #260800,.....Petitioner,

v.


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

CERTIFICATE OF SERVICE

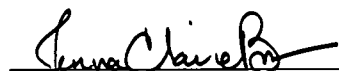
The undersigned hereby certifies that a copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

**Mr. Tommy A. Thomas, Esquire**  
**Post Office Box 88**  
**Irmo, SC 29063**

This 30<sup>th</sup> day of December, 2015.

  
PATRICK L. SCHMECKPEPER  
ATTORNEY FOR RESPONDENT

SWORN to before me this 30<sup>th</sup> day of December, 2015.

  
Notary Public for South Carolina.  
My Commission Expires: 04-28-2025



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DEC 30 2015

S.C. Supreme Court

ALAN WILSON  
ATTORNEY GENERAL

December 30, 2015

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

Re: Alwin Jones, #260800 v. The State of South Carolina  
Appellate Case No. 2015-000105

Dear Mr. Shearouse:

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

Sincerely,

Patrick L. Schmeckpeper  
Assistant Attorney General  
S.C. Bar No. 102100

PLS/jcb  
Enclosures

cc: Tommy A. Thomas, Esquire