

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED  
JUL 08 2018  
S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Anderson County  
The Honorable R. Scott Sprouse, Circuit Court Judge

\_\_\_\_\_  
Appellate Case No. 2017-001738

Claudius Adrian Williams,

Petitioner,

v.

State of South Carolina,

Respondent.

\_\_\_\_\_  
**RETURN TO PETITION FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

ALAN WILSON  
Attorney General

LINDSEY A. MCCALLISTER  
Assistant Attorney General  
S.C. Bar #79054

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

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

RESPONDENT’S QUESTIONS PRESENTED.....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS.....5

STANDARD OF REVIEW.....7

ARGUMENT.....9

I. The PCR court correctly denied relief because Petitioner has not met his burden of proving prejudice because the proceeding before the magistrate judge is afforded a presumption of regularity, and Petitioner presented no evidence at the evidentiary hearing, other than his own speculation, that the officer was not under oath when the arrest warrant was obtained.....9

A. The PCR court correctly found Counsel reasonably concluded there was no meritorious basis to challenge the arrest warrant because Counsel reviewed the warrant and did not see a basis to challenge it, as the proceeding before the magistrate is afforded a presumption of regularity.....10

B. The PCR court correctly found Petitioner failed to meet his burden of establishing he was prejudiced by Counsel’s alleged deficiency where the allegation is supported only by Petitioner’s speculation.....12

II. As an additional sustaining ground, Petitioner’s claim also fails because even if the arrest warrant was invalid, the protective sweep about which Petitioner complains was justified pursuant to State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), and, the clothing evidence was seized pursuant to a valid search warrant and the homeowner’s consent to search.....13

CONCLUSION.....16

## RESPONDENT'S QUESTIONS PRESENTED

- I. Did the PCR court correctly deny relief where Petitioner failed to prove he was prejudiced by Counsel's decision not to challenge the arrest warrant where a presumption of regularity attached to the warrant, Petitioner presented no evidence or testimony other than his own speculation to show the officer was not sworn when the warrant was issued?
- II. As an additional sustaining ground, did the PCR court correctly deny relief where Petitioner cannot prove prejudice in any event because the search Petitioner complains of was justified pursuant to State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), and other more damaging evidence was obtained with a valid search warrant and the homeowner's consent to search?

## STATEMENT OF THE CASE

Claudius Adrian Williams (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Petitioner was indicted at the September 2013 term of the Anderson County Grand Jury for one count of armed robbery (2013-GS-04-1930) and one count of possession of a weapon during the commission of a violent crime (2013-GS-04-1931). Petitioner was represented by Hugh W. Welborn, Esquire. On January 27-28, 2014, he proceeded to trial before the Honorable Frank A. Addy and a jury. Petitioner was convicted as indicted on both counts. Judge Addy sentenced Petitioner to confinement for a period of life without parole for armed robbery. In light of that sentence, Judge Addy did not impose a sentence for the weapons charge.

Petitioner timely filed a notice of appeal, and his appeal was perfected by Tiffany Butler, Esquire, formerly of the South Carolina Commission on Indigent Defense – Appellate Defense Division, pursuant to the procedure set forth in Anders v. California, 386 U.S. 738 (1967). Petitioner’s convictions and sentences were affirmed by the Court of Appeals. State v. Williams, Op. No. 2016-UP-064 (S.C. Ct. App. filed February 17, 2016). The Remittitur was issued on April 26, 2016.

Petitioner then filed an application for post-conviction relief (PCR) on February 25, 2016. Respondent made its return on January 19, 2017. An evidentiary hearing into the matter was convened on February 27, 2017 at the Anderson County Courthouse before the Honorable R. Scott Sprouse. Petitioner was present at the hearing and represented by R. Mills Ariail, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent. By Order filed July 21, 2017, Judge Sprouse denied and dismissed Petitioner’s application with prejudice.

Petitioner filed a timely notice of appeal of the denial of his PCR application. Through counsel, Petitioner filed a Petition for Writ of Certiorari and Appendix in this Court on April 23, 2018. This Return follows.

## STATEMENT OF FACTS

On the night of Wednesday, April 24, 2013, Meseret Kifla was working at the “Lil General” convenience store on South Murray Avenue in Anderson County. App. 99-100. Around 9:00 pm, a man wearing tinted glasses walked into the store holding a plastic grocery bag. App. pp. 105-06. Upon entering the store, the man immediately dropped the bag and walked up to the cash register where Kifla was standing. App. p. 106. He pointed a gun at Kifla and demanded she open the cash register and repeatedly demanded she give him the “bag money.” App. p. 106. Kifla told him that she did not have any “bag money.” App. p. 107. Instead, the man took the cash out of the register, put it in his pocket, and walked out of the store. App. p. 107.

Kifla pushed the store’s panic button, and the police responded. App. p. 107. She gave police a copy of video of the robbery recorded by the store’s surveillance system. App. p. 109. Several days later, one of Kifla’s employees notified Kifla she recognized the robber as the same man who had been in the store as a customer the Monday before the robbery. App. pp. 114-15. Kifla reviewed the store video from that Monday and agreed the man in Monday’s video was the same one who was in the store on the night of the robbery. App. pp. 116-17. However, neither Kifla nor her employee knew the man by name at that time. App. p. 162

Investigator Matthew Ritter, the lead investigator on the case, created a flyer using a still photo taken from the Monday surveillance video. App. pp. 122-23, 163. Kifla testified she “showed that flyer to everyone” who came into the store. App. p. 122. About a month later, a customer told Kifla he recognized the man in the picture as Claudius Williams. App. pp. 123, 159, 166. Kifla obtained the customer’s phone number and passed it on to law enforcement. App. p. 123. After speaking with the customer, Investigator Ritter ordered a six-person photo line-up created by SLED and showed it to Kifla. App. pp. 124, 167-69. Kifla picked Petitioner out of the line-up and identified him as the robber. App. pp. 124, 169.

After learning Petitioner's name and obtaining Kifla's positive identification in the photo line-up, Investigator Ritter "went and spoke to a judge, told him the case," and obtained the arrest warrants for Petitioner. App. p. 170. Ritter, along with other officers, then went to Petitioner's home to serve the warrants. App. p. 171. As the officers approached the front door, they realized it was propped open and covered by a screen, so they could see inside. App. p. 171. Petitioner was sitting on a couch in the living room, and identified himself as Claudius Williams when asked. App. p. 171. Petitioner walked outside upon request, and the officers placed him under arrest. App. p. 171.

Officers then conducted a protective sweep of the house, during which they noticed the end of a gun sticking out from underneath the couch where Petitioner had been sitting. App. p. 172. Ritter asked Petitioner if the gun was his, but Petitioner denied ownership. App. p. 172. Once the officers confirmed there was no one else in the house, everyone exited the home until the forensics unit arrived. App. pp. 172-73. In the meantime, the homeowners returned and gave officers permission to search the house. App. pp. 172-73. According to Ritter, both homeowners denied owning any weapons and told him they did not allow guns in the home. App. p. 174. Officers conducted a search and discovered items of clothing matching the perpetrator's clothing as shown in the surveillance video. App. p. 175. Eventually, while sitting in a police car waiting to be transported to the police station, Petitioner told Ritter "that it was his gun." App. p. 176.

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

## ARGUMENT

- I. The PCR court correctly denied relief because Petitioner has not met his burden of proving prejudice where the proceeding before the magistrate judge is afforded a presumption of regularity, and Petitioner presented no evidence at the evidentiary hearing, other than his own speculation, that the officer was not under oath when the arrest warrant was obtained.**

Petitioner argues trial counsel erred in failing to move to suppress items seized from the residence where he was arrested because the affidavit for the arrest warrant was insufficient to support probable cause, and therefore, the protective sweep<sup>1</sup> performed by officers after Petitioner's arrest was unlawful. However, Petitioner complains only about the seizure of the gun, not the seizure of other evidence – namely clothing items matching the unique outfit worn by the robber – which was obtained pursuant to a search warrant which has never been challenged, either at trial or during the evidentiary hearing. PWC p. 4. “When the defendant claims that counsel’s failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is *meritorious* and that the verdict would have been different absent the evidence that should have been excluded.” McHam v. State, 404 S.C. 465, 475-76, 746 S.E.2d 41, 47 (2013) (citing Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) (emphasis in original). Certiorari should be denied because Petitioner’s argument disregards his burden of proof, which the PCR court correctly determined Petitioner failed to meet, and in any event, Petitioner was not prejudiced because the suppression of the gun would not have changed the result of his trial as the clothing seized pursuant to the search warrant and the homeowner’s consent to search was more damaging to Petitioner’s case.

---

<sup>1</sup> “A ‘protective sweep’ is a quick and limited search of the premises, incident to an arrest and conducted to protect the safety of police officers or others.” State v. Counts, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015) (quoting Maryland v. Buie, 494 U.S. 325, 327 (1990)).

**A. The PCR court correctly found Counsel reasonably concluded there was no meritorious basis to challenge the arrest warrant because Counsel reviewed the warrant and did not see a basis to challenge it, as the proceeding before the magistrate is afforded a presumption of regularity.**

The Fourth Amendment to the United States Constitution, which protects people from unreasonable searches and seizures, provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. Amend. IV. “[T]he concepts of arrested and seizure are related in the sense that an arrest represents the highest form of seizure of the person under Fourth Amendment jurisprudence.” State v. Brannon, 388 S.C. 498, 503, 697 S.E.2d 593, 596 (2010) (citing California v. Hodari D., 499 U.S. 621, 624 n. 3 (1991)). The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. Davis v. United States, 564 U.S. 229, 231 (2011). However, the United States Supreme Court has judicially created a remedy, known as the exclusionary rule, by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment. Id.; State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012). “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991).

“All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, only which, shall a warrant of arrest issue.” S.C. Code Ann. § 22-3-710. A warrant affidavit that is “insufficient in itself to establish probable cause may be supplemented before a magistrate by sworn oral testimony.” State v. Crane, 296 S.C. 336, 338, 372 S.E.2d 587, 588 (1988). “‘Probable cause’ is defined as a good faith belief that a person is guilty of a crime when this

belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.” Jones v. City of Columbia, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990) (citing Gathers v. Harris Teeter Supermarket, 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984)).

While recognizing that a written affidavit may be supplemented by an oral statement given under oath, Petitioner argues the officer’s testimony at trial that he “spoke” with the judge and “told him the case” is insufficient because the officer did not say he was under oath at the time. PWC pp. 10-11. In this case, the arrest warrant contains only the conclusory statement Petitioner committed armed robbery and possession of weapon on the date in question at the address of the Lil General on Murray Avenue. However, the affidavit indicates the affiant, Investigator Ritter, was “duly sworn” and Investigator Ritter testified at trial that he “went and spoke to a judge, told him the case” and “at that time, [] obtained warrants for Claudius Williams.” App. pp. 173, 347.

Ritter was the investigating officer on this case who obtained the photographic lineup identifying Petitioner as the perpetrator. App. pp. 171-72. He testified he personally appeared before the magistrate and told him about the case, and he signed the warrant affidavit. App. pp. 172-73, 347. It is a reasonable inference from Ritter’s testimony that the affidavit and the oral supplementation were given simultaneously, while under oath. See Koch v. United States, 150 F.2d 762 (4th Cir.) (1945) (“A presumption of regularity attaches to official proceedings and acts; it is a well settled rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, *and where the contrary is asserted it must be affirmatively shown.*”) (citing Lewis v. United States, 279 U.S. 63 (1929)) (emphasis added). Further, Counsel, a former magistrate judge himself, testified he reviewed the arrest warrant and

heard the officer's testimony at trial "that he went to the judge and got a warrant." App. p. 333. Counsel testified he felt there was nothing he could have done to challenge it because he had to assume "all the necessary procedural issues were covered, including being under oath." App. p. 333-34. Therefore, given both the affidavit and the officer's supporting oral testimony are afforded a presumption of regularity, there was a substantial basis for Counsel to conclude all of the procedural safeguards were followed when the magistrate issued the arrest warrant, and Counsel's decision not to challenge the arrest warrant was reasonable. Because Petitioner has not met his burden of proving his Fourth Amendment claim is meritorious, the PCR court correctly denied relief, and certiorari should be denied.

**B. The PCR court correctly found Petitioner failed to meet his burden of establishing he was prejudiced by Counsel's alleged deficiency where the allegation is supported only by Petitioner's speculation.**

Additionally, Petitioner did not present any evidence at the evidentiary hearing to show Ritter was not under oath, except Petitioner's own speculative interpretation of Ritter's trial testimony. App. p. 336. This is insufficient to meet his burden of proof regarding prejudice. See, e.g., Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (holding failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result); Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) ("In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.").

Counsel testified Petitioner “assumed that there was no swearing of the warrant, but there’s no testimony about that, and I’ve yet to encounter, in my years of practicing, where that’s ever been an issue.” App. p. 334. Thus, as discussed above, Counsel’s decision not to challenge the arrest warrant was reasonable where, after reviewing the documents and hearing the officer’s trial testimony, he felt he had no meritorious argument to raise. Because Ritter’s testimony at trial was, at worst, ambiguous, and it is Petitioner’s burden to establish the warrant was not sworn, Petitioner has not met his burden of proving prejudice, and certiorari should be denied.

**II. As an additional sustaining ground,<sup>2</sup> Petitioner’s claim also fails on the prejudice prong because even if the arrest warrant was invalid, the protective sweep about which Petitioner complains was justified pursuant to State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015),<sup>3</sup> and, the clothing evidence was seized pursuant to a valid search warrant and the homeowner’s consent to search.**

In Counts, officers approached Counts’ residence to speak to him about their suspicion he was dealing drugs, which ultimately lead to Counts’ detention while officers conducted a protective sweep of the home, turning up evidence of drug use and dealing. Id. at 158, 776 S.E.2d at 62. The trial judge determined that “although the officers did not have probable cause at the time they went to Counts’ residence to either arrest Counts or search his residence. . . law enforcement did not ‘need a warrant to do what any private citizen may legitimately do, approach a home and speak to the inhabitants.’” Id. Further, “once Counts opened the door, and

---

<sup>2</sup> “[B]ecause an appellate court may affirm the lower court’s decision for any reason appearing in the record, the prevailing party may – but is not required to – raise additional sustaining grounds to support the lower court’s decision.” Dreher v. S.C. Dep’t of Health & Envtl. Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015).

<sup>3</sup> Respondent does not suggest the officers in Petitioner’s case were required to comply with the new rule announced in Counts requiring law enforcement officers to have reasonable suspicion of criminal activity before approaching a targeted residence and knocking on the door. 413 S.C. at 172, 776 S.E.2d at 70. However, because the circumstances giving rise to the protective sweep at issue in both cases are similar, Respondent contends the outcomes should be analogous as well, and if the search was justified in Counts, then it is justified in Petitioner’s case as well.

the officers saw him with a gun an exigent circumstance was presented as there was a risk of danger to the officers,” particularly where “the officers were aware that Counts was a convicted felon who was known to have guns.” Id. The trial judge found the officers had probable cause at that time to detain Counts and conduct the protective sweep. Id. Additionally, the trial judge found “once the officers observed drugs in plain view they took the necessary steps to procure the search warrant.” Id. The judge ultimately “declined to suppress the evidence as there was a ‘reasonable search’ that was ‘done pursuant to the constitutional protections afforded by the Fourth Amendment.’” Id. The Supreme Court agreed, and affirmed Counts’ conviction. Id. at 173, 776 S.E.2d at 70.

In this case, officers also essentially conducted a knock and talk, as Ritter testified they went to the home where they believed Petitioner to be “to knock on the door and make contact” with Petitioner. App. p. 171. Once there, Petitioner voluntarily answered the door, identified himself as Claudius Williams, and walked outside to speak with the officers. App. p. 171. At that time, knowing “Claudius Williams” was the name of the person the tipster had identified from the flyer, the name of the person whom Kifla had picked out from the photo lineup, and because officers suspected Petitioner of committing a crime involving a handgun, it was reasonable for them to detain him and conduct a protective sweep of the premises.

During the protective sweep, Ritter’s partner noticed part of gun sticking out from underneath the couch where Petitioner has been sitting. App. p. 172. The gun was not seized at that time, and instead after determining there was no one else in the house, the officers exited the home, and began the process of obtaining a search warrant for the premises. App. pp. 172-73. Ritter eventually obtained a search warrant, which Petitioner has not alleged is improper or deficient in any way, and in addition, the homeowners arrived on the scene and gave law

enforcement permission to search the home. App. pp. 173-74, 189-90. It was only during this search of the home after obtaining a warrant and the homeowners' consent to search, that officers discovered the clothing which was identical to the clothing worn by the robber in the surveillance in a back bedroom. App. pp. 191-92. Ritter testified at trial this clothing was distinctive and matched the clothing worn by the robber both on the night of the robbery and when he was in the store a few days before the crime. App. pp. 175, 192.

Therefore, even if the arrest warrant was invalid, officers properly conducted a protective sweep of the home once Petitioner voluntarily opened the door to speak to officers, and he identified himself as "Claudius Williams," whom they had probable cause to believe was the person responsible for the armed robbery of the Lil General and who was known to carry a gun. Further, officers obtained a valid search warrant and consent to search the residence prior to collecting the gun and, more importantly, the unique, identifying clothing found in the home. Accordingly, even if Counsel had challenged the arrest warrant, the gun and the clothing were still properly admitted at trial, so Petitioner was not prejudiced by Counsel's failure to do so. Therefore, certiorari should be denied.

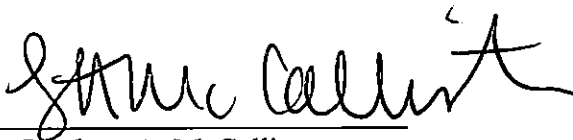
**CONCLUSION**

For all the foregoing reasons, the decision of the PCR court denying Petitioner relief should be affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

LINDSEY A. MCCALLISTER  
Assistant Attorney General

BY:   
Lindsey A. McCallister

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
#79054

ATTORNEYS FOR RESPONDENT

10/8, 2018

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO ANDERSON COUNTY  
Court of Common Pleas  
The Honorable R. Scott Sprouse, Circuit Court Judge

---

Appellate Case No. 2017-001738

---

CLAUDIUS 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:

**Victor R. Seeger, Esquire**  
**SC Commission on Indigent Defense – Appellate Division**  
**Post Office Box 11589**  
**Columbia, South Carolina 29211**

This 8<sup>th</sup> day of October, 2018

  
CAMILLE HENRY  
Legal Assistant



RECEIVED

OCT 08 2018

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

October 8, 2018

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

**Re: Claudius Williams v. State of South Carolina**  
**Appellate Case No. 2017-001738**  
**Lower Court Case No. 2016-CP-04-0512**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey McCallister  
Assistant Attorney General  
SC Bar #79054

LAM/ch

cc: Victor R. Seeger, Esquire