

**J. FALKNER WILKES**

*Attorney at Law*

114 Whitsett Street  
Greenville, South Carolina 29601

Telephone: (864) 282-1292  
Facsimile: (864) 271-6035

April 25, 2013

Daniel Shearouse  
Clerk of the Supreme Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Thomas Jerome Williams v. State of South Carolina  
Appellate Case No.:  
C.A. No.: 2010-CP-42-1458

Dear Mr. Shearouse,

I am enclosing the Appellant's Rule 243(c) statement. I apologize for having overlooked it when I sent the Notice of Appeal.

Respectfully,



J. Falkner Wilkes  
Attorney for Appellant

c.  
Suzanne H. White, Asst. Atty. Gen.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**RECEIVED**

APR 29 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Case No. 2010-CP-42-1458;  
Appellate Docket No. 2013-000780

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Thomas Jerome Williams, 255549, ..... Appellant/Petitioner,

v.

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

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RULE 243(c) STATEMENT

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J. Falkner Wilkes  
114 Whitsett Street  
Greenville, SC 29601  
(864) 282-1292  
(864) 271-6035 facsimile

Attorney for Appellant/Petitioner

## RULE 243(c) STATEMENT

Pursuant to Rule 243 (c) The Appellant submits that this case is appropriate for review based on the foregoing:

The Appellant's request for relief in this case arises out of a defective search warrant. Evidence introduced at the Appellant's trial was obtained through the use of an unsigned search warrant. (Pg. 1-4). Appellant contends that pursuant to a recent holding of the Supreme Court the unsigned warrant was invalid and that no reasonable officer could have relied upon it. State v. Covert, 382 S.C. 205 (2009). The failure of Appellant's prior counsel to assert a proper challenge to the search warrant at various stages of the Appellant's trial and post trial proceedings constitutes ineffective assistance of counsel. As a result the Appellant's conviction and sentence are unlawful and in violation of both State and Federal law.

Appellant's issue arises out of the defective search warrant. *See* State v. Covert, 382 S.C. 205 (2009). Covert establishes a new substantive standard under state law and protects individuals from searches conducted on unsigned warrants: "[U]nder South Carolina law an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of § 17-13-140. Covert was decided April 13, 2009. Appellant filed the present action on March 17, 2010, within one year of the Court's decision in Covert. S.C. Code Section 17-27-45(B) provides that:

When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

S.C. Code Section 17-27-45(B).

Pursuant to § 17-27-45(B), having been filed within one year of the decision in Covert, the Appellant's Form 5 seeking relief under Covert is timely.

Appellant's claim remains timely even without the application of 17-27-45(B). The Court's Conditional Order of Dismissal finds that the Appellant failed to raise the search warrant issue in his original PCR and therefore he is barred from raising the issue now. The Court overlooks evidence in the record clearly showing that he did make an attempt to raise the issue in the prior PCR by filing a pro se amendment to the Form 5 filed by appointed PCR counsel. Having done so, the issue is controlled by S.C. Code Section 17-27-90.

Under S.C. Code Section 17-27-90, the Appellant's claim is still viable if he has not waived the claim and the claim has never been fully adjudicated. A review of the record shows neither has occurred in the Appellant's case. Despite the Appellant's attempt to raise the issue in the prior PCR, it was never addressed by the PCR Court in its Order of Dismissal, nor by the Supreme Court in its Order dismissing the appeal from the initial PCR. The general rule on successive actions only applies where the issue was properly raised and finally adjudicated or waived by the Appellant. The record in this case fails to show that the search warrant issue was ever waived by the Appellant or that the issue was finally adjudicated. As a result, the Appellant should not be barred from raising the issue in the present action.

In this case the Appellant's conviction rests on evidence obtained by an illegal search warrant. The search warrant at issue was not signed by the magistrate and therefore was not a valid search warrant. Despite the obvious defect evidence obtained with the warrant was admitted without an objection from the defense counsel. Most likely as a result of the lack of a contemporaneous

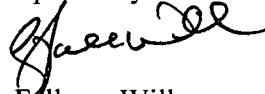
objection on the part of defense counsel at trial, the issue was not raised by appellate counsel on direct appeal. In the Appellant's initial post conviction relief action, PCR counsel failed to raise the search warrant issue in the Appellant's Form 5. The Appellant however, attempted to raise the issue himself by filing an amendment to the application. Despite his attempt to raise it, the search warrant issue was not addressed by the PCR court in the initial proceedings. Nevertheless, the Appellant's attempt to raise the search warrant issue establishes that the Appellant never intended a waiver of that issue.

In addition to the lack of a waiver, the record also establishes that the search warrant issue has never been finally adjudicated. Appellant's initial PCR resulted in an Order of Dismissal that failed to address the search warrant issue. An appeal was taken from the Circuit Court's Order of Dismissal. The search warrant issue was still not raised by PCR counsel who filed a Johnson Brief and motion to be relieved. Again, Appellant attempted to file his own supplemental brief raising the search warrant issue. Despite Appellant's attempt to raise the issue, the Supreme Court dismissed the Appellant's appeal from the Order of Dismissal without any specific ruling on the search warrant issue. As a result of the Courts' failure to make a specific ruling as to the search warrant issue, the issue can not be said to have been finally adjudicated. Having nether been finally adjudicated nor waived, the issue is not barred under the Uniform Post-Conviction Procedure Act in the present action.

Appellant timely filed a Motion pursuant to Rule 59(e) to preserve the issues in this case. Based on the foregoing, the Application in this case has a valid, non-frivolous basis for the petition to this Court and should not be barred by the statute of limitation or by the provisions as to successive claims. Wherefore, Appellant submits that he should be allowed an opportunity to

petition this Court for further relief.

Respectfully submitted,



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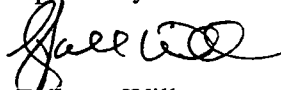
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CERTIFICATE OF SERVICE

I certify that on the 25<sup>th</sup> day of April, 2013, I served a copy of the Rule 243(c) Statement on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Suzanne H. White, Asst. Atty. Gen.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Respectfully submitted,



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