090483

COPY

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
MAR 13 2009
RICHMOND, VIRGINIA

IN THE
SUPREME COURT OF VIRGINIA

MICHAEL ANTWUAN WILLIAMS, #347945
PETITIONER,

v.

WARDEN, of the SUSSEX I STATE PRISON,
RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS
AD SUBJICIENDUM

Record No.: _____

COUNSEL FOR PETITIONER:

JAMES M. SITTON, II, ESQUIRE
VIRGINIA STATE BAR NO.: 71458
THE JACKSON LAW GROUP, P.C.
406 WEST FRANKLIN STREET, 2ND FLOOR
RICHMOND, VIRGINIA 23220
TELEPHONE: (804) 726-6601
FACSIMILE: (804) 726-2999

TABLE OF CONTENTS

		Page
	Table of Authorities	iii
	Nature of the Case, Material Proceedings Below	2
	Grounds for Habeas Relief	5
I.	Petitioner was denied his Constitutional Right to Effective Assistance of Counsel Pursuant to the Sixth Amendment of the United States Constitution which is applicable to the Commonwealth by virtue of the Fourteenth Amendment.	5
	A. Counsel's Failure to Properly Appeal Petitioner's Case from the Court of Appeals to the Supreme Court Deprived the Petitioner of His Appellate Due Process Rights and Effectively Deprived Him of His Sixth Amendment Right to Effective Assistance of Counsel.	5
	Statement of Facts	5
	Issues Presented	8
I.	Petitioner was denied his Constitutional Right to Effective Assistance of Counsel Pursuant to the Sixth Amendment of the United States Constitution which is applicable to the Commonwealth by virtue of the Fourteenth Amendment.	8
	A. Counsel's Failure to Properly Appeal Petitioner's Case from the Court of Appeals to the Supreme Court Deprived the Petitioner of His Appellate Due Process Rights and Effectively Deprived Him of His Sixth Amendment Right to Effective Assistance of Counsel.	8
	Argument	8

I. Petitioner was denied his Constitutional Right to Effective Assistance of Counsel Pursuant to the Sixth Amendment of the United States Constitution which is applicable to the Commonwealth by virtue of the Fourteenth Amendment 8

A. Counsel's Failure to Properly Appeal Petitioner's Case from the Court of Appeals to the Supreme Court Deprived the Petitioner of His Appellate Due Process Rights and Effectively Deprived Him of His Sixth Amendment Right to Effective Assistance of Counsel. 8

Conclusion 13

Request for Oral Arguments 14

Appellant's Affidavit 15

Certificate 16

Exhibit A: Affidavit from Counsel

TABLE OF AUTHORITIES

	Page
United States Supreme Court	
Bendlin v. California, 551 U.S.___, 127 S. Ct. 2400 (2007)	9, 11
Darden v. Wainwright, 477 U.S. 168 (1986)	10
Kimmelman v. Morrison, 477 U.S. 365 (1986)	11, 12
Strickland v. Washington, 466 U.S. 668 (1984)	10, 11, 12
Wiggins v. Smith, 539 U.S. 510 (2003)	10, 12
Williams v. Taylor, 529 U.S. 362 (2000)	10
Yarborough v. Gentry, 540 U.S. 1 (2003)	12
Virginia Supreme Court	
Commonwealth of Virginia v. Tweed, 264 Va. 524, 570 S.E.2d 797 (2002)	9
Johnson v. Tice, 275 Va. 18, 654 S.E.2d 917 (2008)	10
United Leasing Corp. v. Thrift Ins. Corp., 247 299, 440 S.E 2d 902 (1994)	9
Code of Virginia (1950), as amended	
Virginia Code Section 8.01-654	1
Virginia Code Section 18.2-248.01	2, 3
Virginia Code Section 18.2-308.4	3

IN THE
SUPREME COURT OF VIRGINIA

MICHAEL ANTWUAN WILLIAMS, #347945 APPELLANT,

v.

WARDEN, SUSSEX I STATE PRISON, APPELLEE.

Serve:

Robert McDonnell, Esquire
Attorney General for the Commonwealth of Virginia
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE CHIEF JUSTICE AND JUDGES OF THE SUPREME COURT OF VIRGINIA:

COMES NOW, the Petitioner/Appellant, Michael Antwuan Williams, Inmate Number 347945, (hereinafter "Williams," "Defendant," "Appellant," or "Petitioner"), pursuant to Section 8.01-654 of the Code of Virginia (1950), as amended, and moves this Honorable Court to grant his petition for Habeas Corpus Relief and to allow this matter to be referred to the Circuit Court of

proper jurisdiction for a plenary hearing for the reasons set forth in this petition.

NOTICE

Place of Detention - Sussex I State Prison
Loretta K. Kelly, Warden
24414 Musselwhite Drive
Waverly, Virginia 23891-1111

NATURE OF THE CASE, MATERIAL PROCEEDINGS BELOW

The name and location for the Court that imposed the sentence from which Petitioner seeks relief

Stafford County Circuit Court
Post Office Box 69
1300 Courthouse Road
Stafford, Virginia 22555-0069

A. Criminal Proceeding

Michael A. Williams, inmate number 347945, is currently incarcerated at Sussex I State Prison located in Waverly, Virginia. On July 8, 2004, the Petitioner was found guilty by a jury in the Stafford County Circuit Court, the Honorable Ann Hunter Simpson, presiding, of transporting a controlled substance (cocaine) with the intent to distribute, in violation of Virginia Code Section 18.2-248.01 (1950), as amended, case number CR03001024-02; transporting a controlled substance (heroin) with the intent to distribute in violation of Virginia Code Section 18.2-248.01 (1950), as amended, case

number CR03001024-03; and possession of a firearm in violation of Virginia Code Section 18.2-308.4 (1950), as amended, case number CR03001024-04. Although the Petitioner was found guilty on the above-mentioned date, imposition was delayed pending a Presentence Report.

On September 16, 2004, after a presentation of evidence and argument to the Honorable Court with regard to sentencing, Judge Simpson reaffirmed the jury's sentence by sentencing the Defendant/Appellant to serve a period of incarceration of twenty-five (25) years and a fine of two-hundred thousand ($200,000) dollars for transporting a controlled substance (cocaine), violating Virginia Code Section 18.2-248.01 (1950), as amended, case number CR03001024-02; twenty-five (25) years for transporting a controlled substance (heroin), in violation of Virginia Code Section 18.2-248.01 (1950), as amended, case number CR03001024-03; and five (5) years for possession of a firearm in violation of Virginia Code Section 18.2-308.4 (1950), as amended, case number CR03001024-04. The Appellant was sentenced to serve a total term of incarceration of fifty-five (55) years. Said sentence is to be served consecutively.

The Notice of Appeal was timely noted with the Stafford County Circuit Court. The Petition for Appeal was filed with the Court of Appeals on March

7, 2005, and subsequently granted on August 8, 2005.The Appellant's Designation was filed on August 23, 2005, whereby the Opening Brief was submitted on December 6, 2005, as well as the Appendix. Said matter was disposed on June 20, 2006, whereby the judgment of the trial court was affirmed.

On July 13, 2006, Appellant noted his appeal to the Supreme Court of Virginia. Petitioner was assigned the case record number of 062246. The Petition for Appeal was untimely filed on November 8, 2006, and was dismissed on February 28, 2007. Counsel, on behalf of Petitioner, then filed a Petition for Rehearing, which was also refused on May 2, 2007. Counsel filed a Motion to Pursue a Delayed Appeal with the court on or about May 4, 2007, which was granted.

A new record number was assigned: 071504. Counsel was then able to file on or about June 21, 2007, the Notice of Appeal anew. On July 17, 2007, the Petition of Appeal was filed, whereby on October 31, 2007, the Petition was granted. The Opening Brief was submitted by the Appellant on December 10, 2007, as well as the Appendix. Said matter was then placed on the March session and the matter was heard and dismissed on March 14, 2008. Counsel filed a Notice of Rehearing on or about March 24, 2008, and the subsequent

Petition on April 8, 2008. The Petition for Rehearing was refused on June 13, 2008.

Counsel represented Appellant during his criminal trial, and on appeal. Appellant has exhausted all of his appellant remedies. This is the Petitioner's first filing of a Writ of Habeas Corpus pertaining to this matter.

GROUNDS FOR HABEAS RELIEF

I. Petitioner was denied his Constitutional Right to Effective Assistance of Counsel pursuant to Sixth Amendment of the United States Constitution which is applicable to the Commonwealth by virtue of the Fourteenth Amendment.

A. Counsel's Failure to Properly Appeal Petitioner's Case from the Court of Appeals to the Supreme Court Deprived the Petitioner of His Appellate Due Process Rights and Effectively Deprived Him of His Sixth Amendment Right to Effective Assistance of Counsel.

STATEMENT OF FACTS

On March 24, 2003, at approximately one o'clock in the morning, Deputy Kevin Gary ("Gary") of the Stafford Police Department was traveling on Interstate 95 in the course of a routine patrol. (Tr. 112-113, July 7, 2004). Deputy Gary began traveling next to a black Ford Excursion, which was also traveling on Interstate 95. (Tr. 114). While driving alongside of the Excursion, Deputy Gary noticed that an interior light was on which illuminated the interior of the Ford Excursion. (Tr. 114-115). Deputy Gary saw the passenger,

Michael Williams, light what appeared to be a marijuana cigarette. (Tr.116-117). Deputy Gary pulled behind the Ford Excursion and turned on his blue lights, and stopped the vehicle to investigate. (Tr.118). As Deputy Gary approached the car, he saw a white smoky substance come out of the window, and smelled what he believed to be marijuana. (Tr.118). The driver, Twana Davis, identified herself to the officer, and provided her driver's license. (Tr.121). The passenger, Mr. Williams, did not provide identification. (Tr.123). Deputy Gary asked Mr. Williams to step out of the vehicle. (Tr.125). As Michael Williams opened the door of the vehicle and stepped out, two (2) red baggies containing what appears to be marijuana fell from his seat to the floor of the Ford Excursion. (Tr.125).

Mr. Williams was placed under arrest because the officer believed the baggies contained marijuana. (Tr.127). As a result of this arrest, the Deputy searched Williams and found cash and illegal substances on his person. (Tr.129). After arresting Williams, the Deputy proceeded back to the vehicle, and asked Ms. Davis to step out of the vehicle. (Tr.137). Deputy Gary then performed a search incident to the arrest of Williams. (Tr.139). In performing his search of the vehicle, Deputy Gary found what appeared to be illegal substances, a large amount of money, and a firearm. (Tr.142-156). Mr.

Williams fingerprints were not found on the firearm, money or the drugs found in the car. (Tr.180).

In order to contest the illegal seizure and search, Counsel for Appellant filed a Motion to Suppress, and argued said motion on February 17, 2004, before the Honorable Ann Simpson, Judge of the Stafford County Circuit Court. (App. 11). Counsel for Appellant argued that Appellant had standing to protest the illegal stop of the vehicle, even though Appellant was not authorized to operate the vehicle because Appellant had a reasonable expectation of privacy in said vehicle. (App. 181-183). The Commonwealth argued that Appellant did not have standing to contest the stop of the vehicle because he did not have a reasonable expectancy of privacy. (App. 196). The trial court agreed with the Commonwealth and held Appellant did not have standing to contest the illegal stop because he did not have a reasonable expectation of privacy, (App. 206).

ISSUES PRESENTED

I. Petitioner was Denied his Constitutional Right to Effective Assistance of Counsel Pursuant to Sixth Amendment of the United States Constitution which is Applicable to the Commonwealth by virtue of the Fourteenth Amendment.

A. Counsel's Failure to Properly Appeal Petitioner's case from the Court of Appeals to the Supreme Court deprived the Petitioner of his Appellate Due Process Rights and Effectively Deprived him of his Sixth Amendment Right to Effective Assistance of Counsel.

ARGUMENT

I. Petitioner was Denied his Constitutional Right to Effective Assistance of Counsel Pursuant to Sixth Amendment of the United States Constitution which is Applicable to the Commonwealth by virtue of the Fourteenth Amendment.

A. Counsel's Failure to Properly Appeal Petitioner's Case from the Court of Appeals to the Supreme Court Deprived the Petitioner of His Appellate Due Process Rights and Effectively Deprived Him of His Sixth Amendment Right to Effective Assistance of Counsel.

Counsel's responsibility to the Petitioner was to appeal his cause to the Court of Appeals of the Commonwealth of Virginia and to the Supreme Court of the Commonwealth of Virginia, if necessary. In this regard, the issues that Petitioner and Counsel had agreed upon for the purpose of appeal were multiple. However, for the purpose of this Habeas, the issues that were of utmost importance to the Petitioner were whether the Petitioner had standing to challenge the validity of the stop and whether or not said stop was valid.

This Honorable Court on March 14, 2008, in a written opinion, affirmed that the Petitioner had standing to challenge the validity of the stop based on a recent decision of the United States Supreme Court in **Bendlin v.**

California, 551 U.S. ___, 127 S.Ct. 2400 (2007)(passenger seized in a traffic stop may challenge validity of the stop.) However, this Honorable Court in the aforesaid decision stated that with regard to the second issue that Counsel was under a duty and obligation to appeal, "The Court of Appeals held that the validity of the stop was not an issue on appeal before that court and Williams did not assign error to that holding." Citing **Commonwealth v. Tweed**, 264 Va. 524, 528, 570 S.E.2d 797, 800 (2002). "Consequently, the trial court's alternative holding that the stop was valid is an independent basis for the trial court's judgment that has not been challenged on appeal. See **United Leasing Corp. v. Thrift Ins. Corp.**, 247 Va. 299, 308, 440 S.E.2d 902, 907 (1994).

Similarly, the Court of Appeals in its Memorandum Opinion dated June 20, 2006, stated in specifically footnote three, "The appellant makes no argument whatsoever that the police officer did not have reasonable articulable suspicion to stop that vehicle . . . on appeal, we will consider only those arguments presented in the petition for appeal and granted by this Court . . . "

In order for a petitioner to prevail on a claim of ineffective assistance of counsel, petitioner must ordinarily satisfy both parts of the two-part test set

forth in *Strickland*. **Wiggins v. Smith**, 539 U.S. 510 (2003); **Williams v. Taylor**, 529 U.S. 362, 390 (2000). The Petitioner first must show that "counsel's representation fell below an objective standard of reasonableness."**Strickland v. Washington**, 466 U.S. 668 (1984). In making this determination, the court considering the habeas corpus petition "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." **Ibid.** at 689; accord **Darden v. Wainwright**, 477 U.S. 168, 185-86 (1986).

If Counsel's performance is found to have been deficient under the first part of the Strickland test, to obtain relief the Petitioner must also show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." **Strickland**, 466 U.S. at 694; **Johnson v. Tice**, 275 Va. 18, 27-28, 654 S.E.2d 917, ___ (2008).

When, as in the present case, the principal allegation of ineffectiveness is Counsel's failure to litigate competently a constitutional claim, a habeas petitioner first must prove that the constitutional claim is meritorious. See **Kimmelman v. Morrison**, 477 U.S. 365 (1986). The habeas petitioner

secondly must establish that there is a reasonable probability that the verdict would have been different had the fact finder not considered the excludable evidence. **Id.**; see **Strickland, supra** at 694.

It is without question that Counsel failed to preserve the essential issue which was material to a successful and meritorious claim. Counsel's actions amounted to "buying a key and forgetting to construct the door." The Commonwealth conceded, by virtue of the ruling in **Bendlin**, that the Petitioner had standing. However, this concession had no significance, when the essential issue of whether or not said stop was valid could not be determined because of Counsel's failure to preserve said issue on appeal.

This Honorable Court conceded and the Supreme Court of the United States confirmed that Petitioner's claim had merit by virtue of **Bendlin**. Further, the suppression of the evidence by the Appellate Courts was a reasonable probability especially in consideration of the Honorable Judge Benton's dissenting opinion in the Court of Appeals. Although the majority opinion dealt with the issue of standing, the Honorable Judge Benton went a step further and found (which was later corroborated by the Supreme Court of the United States) not only standing to present the issue, but that the Deputy Sheriff lacked the reasonable suspicion necessary to stop, detain and

search the Petitioner.

Counsel's failure to preserve this essential issue on appeal deprived the Petitioner under the Sixth Amendment of an effective assistance of counsel as set forth in **Yarborough v. Gentry**, 540 U.S. 1, 5 (2003). Under this guarantee, a defendant is entitled to counsel who is reasonably competent and who gives advice that is within the range of competence required of an Attorney in criminal and appellate cases. **Wiggins v. Smith**, 539 U.S. 510, 521-23 (2003); **Kimmelman v. Morrison**, 477 U.S. 365, 384 (1986); and **Strickland**, 466 U.S. at 687.

Counsel's failure to preserve an error on appeal is a fundamental error which is intrinsic to appellate practice. All attorneys who practice before the appellate courts, as well as trial counsels, know and understand that the appellate Courts can only review issues which have been assigned as error. Without an assignation, the Courts will refuse to review, because said Courts lack the necessary jurisdiction to review.

Counsel's failure and/or omission in this instance is below the required standard of competence required herein. Further, it is painfully obvious that if Counsel had performed in a competent manner, the relevant issue would have been before the appropriate Court and a favorable decision would have

been rendered.

The issues presented in this Petition for Writ of Habeas Corpus, as presented herein, have not been presented to a court previously due in part to counsel's ineffectiveness, and in his failure in preventing to preserve the Appellant's right of the due process of law.[1]

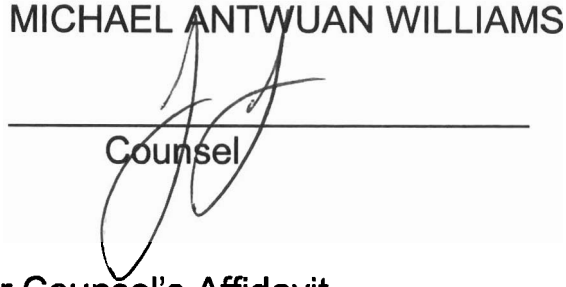
CONCLUSION

In light of the aforesaid, Petitioner humbly requests that a finding be made that Counsel was ineffective in his representation of the Petitioner on appeal, both before the Court of Appeals and Supreme Court of Virginia. It is further requested that this matter be allowed to be heard before this Honorable Court in order that all matter relevant and necessary may be evaluated.

REQUEST FOR ORAL ARGUMENT

Counsel for counsel, requests this Honorable Court for the opportunity to orally argue the merits of this petition.

Respectfully Submitted,
MICHAEL ANTWUAN WILLIAMS



Counsel

[1]See attached Exhibit A marked for Counsel's Affidavit.

James M. Sitton, II, Esquire
Virginia State Bar No.: 71458
The Jackson Law Group, P.C.
406 West Franklin Street, 2nd Floor
Richmond, Virginia 23220
Telephone: (804) 726-6601
Facsimile: (804) 726-2999
email: msitton@jacksonlawgrp.com
Counsel for Michael Antwuan Williams

APPELLANT'S AFFIDAVIT

Commonwealth of Virginia
~~City/County of~~ ~~Dussey~~ LAD _____:
City of Richmond

The Petitioner being first duly sworn, says:

1. He signed the foregoing petition; and
2 The facts stated in the petition are true to the best of his information and belief.

Michael A. Williams
MICHAEL ANTWUAN WILLIAMS

Subscribed and Sworn to me before me this 13th day of March, 2009 in the abovementioned jurisdiction.

My Commission Expires: 7/31/2012

Notary Number: 7206582

Latrese Ann Davis
Notary Public

LATRESE ANN DAVIS
COMMONWEALTH
OF
VIRGINIA
NOTARY PUBLIC

CERTIFICATE

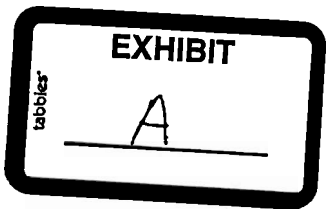
I do hereby certify that on this 13th day of March, 2009 a true copy of the foregoing was sent by first class mail and served by private process server to:

Robert McDonnell, Esquire
Attorney General for the Commonwealth of Virginia
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

and by first-class mail to:

Loretta K. Kelly, Warden
Sussex I State Prison
24414 Musselwhite Drive
Waverly, Virginia 23891-1111

James M. Sitton, II, Esquire
Virginia State Bar No.: 71458
The Jackson Law Group, P.C.
406 West Franklin Street, 2nd Floor
Richmond, Virginia 23220
Telephone: (804) 726-6601
Facsimile: (804) 726-2999
email: msitton@jacksonlawgrp.com
Counsel for Michael Antwuan Williams



IN THE
SUPREME COURT OF VIRGINIA

MICHAEL ANTWUAN WILLIAMS, #347945,
PETITIONER,

v. Record No.: _____

WARDEN, SUSSEX I STATE PRISON,
RESPONDENT.

COUNSEL'S AFFIDAVIT

I, BRENT A. JACKSON, Esquire, after being placed under oath and made aware of the significance therein, do hereby make the below statement:

1. Please be informed that I represented Michael Williams, #347945 in the Stafford Circuit Court, as well as on appeal.
2. It has become painfully obvious to me after the review of the file with regard to the appeals to the Court of Appeals and Supreme Court of Virginia that I failed to properly note Mr. William's appeal on the issue of whether or not there existed probable cause to effect the stop of the vehicle in which he was a passenger. In essence the second issue of the validity of the stop.
3. My actions deprived Mr. Williams of an opportunity to have the essential

issue of whether the stop was valid to be heard and reviewed by the appellate courts.

4. That said action and/or omission on my behalf to preserve this essential issue was material to the entire appeal.

5. It was obvious from the dissenting opinion of the Honorable Judge Benton in the Memorandum Decision of the Court of Appeals, that the Deputy Sheriff did not have the necessary reasonable articulable suspicion necessary to stop and detain Mr. Williams.

6. In failing to preserve and raise this issue on appeal I was ineffective in my representation of Mr. Williams and thereby deprived him of his constitutional right not only to effective assistance of counsel pursuant to the sixth amendment of the United States Constitution, but also deprive him of a fundamental due process right to have all issues adjudicated.

7. That my failure to preserve this issue was material to his claim and would have reasonably cause the trier of law and fact to make a determination favorable to his cause.

8. I ask that this matter be heard to insure that a fundamental injustice is not done in his case.

3/13/09
Date

Brent A. Jackson, Esquire

Commonwealth of Virginia:
City of Richmond, to-wit;

I, Tina L. Glasneck, notary public in the abovementioned jurisdiction do hereby certify that Brent A. Jackson, Esq., did execute this affidavit before me on this 13th day of March, 2009 after being placed under oath and made aware of the significance therein.

Tina L. Glasneck
Notary Public

My Commission Expires: 3-31-2009

Notary Number: 366095