

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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Deadra L. Jefferson, Circuit Court Judge  
Appellate Case No. 2013-001537

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Theodore Cobbs, # 330717,  
Petitioner,

v.

State of South Carolina,  
Respondent.

**RECEIVED**

JUL 30 2014

**S.C. Supreme Court**

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**Reply in Support of  
Motion to Include in the Appendix Material Not in the Lower Court Record**

Petitioner replies to Respondent's Return as follows:

1. To the extent that Respondent implies that this is not an unusual case, Respondent errs. It is by no means usual for counsel to conduct a hearing without informing the court of an outstanding motion that he/she be relieved, and for the judge to refuse to hear the client when he attempts *pro se* to raise the issue.

2. Respondent goes well beyond the issues raised in Petitioner's motion, arguing that the entire question of his *pro se* motion to relieve counsel should not be considered because the lower court did not rule on it.

It may be that the PCR judge never ruled on the merits of his motion, but the issue is nevertheless preserved.

At the conclusion of the hearing, the trial judge orally announced her decision. Ex. 3, p. 2 (Tr. PCR Hr'g, p. 86, lines 11-13) (“the application is denied.”).<sup>1</sup> Four days later, Petitioner filed a *pro se* motion under Rule 59(e) to alter or amend, Ex. 4, explicitly raising the failure to hear his motion to remove and replace counsel, *id.* p. 4.

His motion to alter or amend asked that it be considered a continuing motion. It asked that the court “reconsider its verbal denial” of his application, and further asked that the motion “also cover any and all written orders of denial of his PCR application.” *Id.*, p. 1. He therefore fulfilled even the issue preservation requirements required of attorneys in the usual case. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (If a court does not rule on a raised issue, it suffices to preserve the issue if the party timely files a motion to alter or amend the judgment).

The PCR judge denied his motion as untimely, on grounds he had filed it before she had issued her written order. Ex. 5.<sup>2</sup> Petitioner timely filed a *pro se* Notice of Appeal of the denial of his motion. Ex. 6.<sup>3</sup>

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<sup>1</sup> Exhibits 1 and 2 were provided with the initial Motion.

<sup>2</sup> Although the PCR judge stated that she “fully considered” the Motion, she did not address the merits.

The Applicant's Motion is untimely, as a Final Order has not yet been issued by the Court. It is premature for the Court to consider the merits of the Applicant's Motion until a Final Order is issued. Having fully considered the Plaintiffs Motion for Reconsideration filed May 24, 2013, as well as the untimeliness of the Motion, the Plaintiff Theodore Cobbs' Motion for Reconsideration is hereby dismissed as premature.

Order on *pro se* motion to amend (Ex. 5), p. 1 (emphasis added).

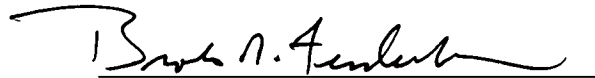
<sup>3</sup> Exhibit 6 is an unstamped copy obtained directly from Petitioner. Per conversation of counsel with the office of the Clerk of this Court, a filed copy is in the records of this Court.

Petitioner has done all that should reasonably be asked of a *pro se* litigant.

Wherefore, for the reasons stated in his Motion, Petitioner respectfully requests that his Motion be granted.

Respectfully submitted,

7/28/14



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Brooks R. Fudenberg  
LAW OFFICE OF BROOKS R.  
FUDENBERG, LLC  
1004 Anna Knapp Blvd., Suite 3  
Mt Pleasant, SC 29464  
(843) 416-2558

Attorney for Petitioner

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Petitioner, **S.C. Supreme Court**

v.

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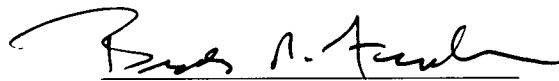
Respondent.

\_\_\_\_\_  
**Proof of Service**

I certify that I have served a copy of the foregoing Reply in Support of Petitioner's Motion to Include in the Appendix Material Not in the Lower Court Record on the Respondent, by depositing a copy today in the United States Mail, proper postage pre-paid, addressed to:

Ass't Attorney General Ashleigh R. Wilson, Esq.  
South Carolina Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549

July 28, 2014  
Mt Pleasant, SC



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Brooks R. Fudenberg  
LAW OFFICE OF BROOKS R. FUDENBERG,  
LLC

**LAW OFFICE OF BROOKS R. FUDENBERG, LLC**

1004 Anna Knapp Blvd., Suite 3  
Mt Pleasant, SC 29464  
Tel. (843) 416-2558  
BRF@Fudenberglaw.com

July 28, 2014

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

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**S.C. Supreme Court**

ATTN: Ms. Janet Johnson

RE: Theodore Cobbs v. State  
Appellate Case No. 2013-001537

Dear Ms. Johnson,

Enclosed please find:

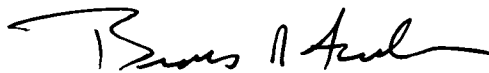
- \* an original and six copies of Petitioner's Reply in Support of his Motion to Include in the Appendix Material Not in the Lower Court Record;
- \* an original and a copy of the proof of service of same; and
- \* a return envelope.

Please return a copy of the proof of service in the enclosed envelope.

As always, if I may provide additional information, please do not hesitate to contact me.

With kind regards, I am,

Yours very truly,



Brooks R. Fudenberg  
Attorney for Petitioner

cc: Ashley R. Wilson, Esq.