

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Altony Brooks, #313000,)
Applicant,)

Case No. 2011-CP-08-2266

v.)

ORDER OF DISMISSAL
(Failure to Prosecute)

State of South Carolina,)
Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 4, 2011. Respondent made a timely Return on or about December 9, 2011. The Court finds as follows:

I. PROCEDURAL HISTORY

In October 2008, the Berkeley County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (2008-GS-08-1728) and aiding escape from custody of an officer (2008-GS-08-1729). J. Mitchell Lanier, Esquire, represented Applicant. Applicant proceeded to trial on January 12-13, 2009 before the Honorable Kristi L. Harrington and a jury. The jury found Applicant guilty as indicted. Judge Harrington sentenced Applicant to consecutive terms of imprisonment for ten (10) years for ABHAN and two (2) years for aiding escape from custody of an officer.

Applicant filed a timely notice of appeal, and Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. Following full briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence.

State v. Brooks, Op. No. 2010-UP-570 (S.C. Ct. App. filed December 31, 2010). The Remittitur was returned to the circuit court on January 20, 2011.

The Court convened an evidentiary hearing into the application on April 22, 2015, at the Charleston County Courthouse. Lance S. Boozer, Esquire, appeared on behalf of Applicant. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Motion to Relieve Counsel

At the commencement of the evidentiary hearing, Applicant moved to relieve Mr. Boozer from representing him. In support of his motion, Applicant alleged Mr. Boozer was involved in a conspiracy with the State and merely represented the "straw man" corporate entity established in Applicant's name. The Court admonished Applicant that Mr. Brooks represented Applicant, and no such "straw man" existed. Nevertheless, Applicant insisted he would represent himself, and Mr. Boozer could represent the "straw man." After Mr. Boozer explained to Applicant the disadvantages of representing himself, Applicant again indicated his desire to represent himself, with Mr. Boozer representing his "straw man" corporation. The Court relieved Mr. Boozer from representing Applicant, and excused Mr. Boozer from the court room, as no "straw man" corporation was a party to this litigation.

B. Failure to Prosecute

The Court also admonished Applicant during his motion to relieve that the Court would not tolerate Applicant's failure to comply with the rules, and any failure to comply would result in the dismissal of his post-conviction relief action. After giving Applicant a brief recess to prepare to present his case, the Court recognized Applicant to call his first witness. In response,

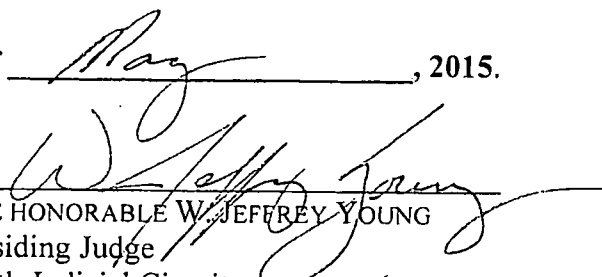
Applicant refused to call any witnesses.

Applicant has the burden of prosecuting his action, and the Court may properly dismiss an action for his neglect in proceeding with his cause. See, e.g. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). The Court may dismiss an action for "failure of the plaintiff to prosecute or to comply with [the rules of civil procedure] or any order of court." Rule 41(b), SCRPC. Furthermore, the Court has the inherent authority to dismiss an action for failing to prosecute the action or otherwise comply with the Court's orders. See Collins v. Sigmon, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) (citing Link v. Wabash Railroad Co., 370 U.S. 626 (1962)). Because Applicant refused to call any witnesses when directed to do so, he has failed to prosecute his action and failed to comply with the rules of court. Accordingly, the Court finds it proper to dismiss this action for Applicant's refusal to prosecute his action.

IT IS THEREFORE ORDERED:

1. The above captioned application is **DISMISSED WITH PREJUDICE** for failure of the Applicant to prosecute.

AND IT IS SO ORDERED this 1 day of May, 2015.


THE HONORABLE W. JEFFREY YOUNG
Presiding Judge
Ninth Judicial Circuit

Sumter, South Carolina