

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO BERKELEY COUNTY  
Court of Common Pleas

The Honorable William Jeffrey Young, Circuit Court Judge

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Appellate Case No.: 2015-001610

ALTONY BROOKS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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Attorney General

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ATTORNEYS FOR RESPONDENT

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**FEB 20 2010**

**SC SUPREME COURT**

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## **PETITIONER'S ISSUE PRESENTED**

- I. Whether Petitioner's case should have been dismissed with prejudice for his failure to prosecute when his competency was drawn into question.

## STATEMENT OF THE CASE

In October 2008, the Berkeley County Grand Jury indicted Petitioner 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 Petitioner. Petitioner proceeded to trial on January 12-13, 2009 before the Honorable Kristi L. Harrington and a jury. The jury found Petitioner guilty as indicted. Judge Harrington sentenced Petitioner to consecutive terms of imprisonment for ten (10) years for ABHAN and two (2) years for aiding escape from custody of an officer.

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

On August 4, 2011, Petitioner filed an application for post-conviction relief. Respondent made its Return, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was convened on April 22, 2015, at the Charleston County Courthouse before the Honorable W. Jeffrey Young. Petitioner was present at the hearing and was represented by Lance S. Boozer, Esquire (hereinafter "Counsel"). Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By an Order of Dismissal dated May 1, 2015, the PCR Court dismissed the application with prejudice for failure to prosecute.

## STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings.

Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

## ARGUMENT

Petitioner argues that the PCR Court erred in dismissing Petitioner's Application for failure to prosecute. For the following reasons, Respondent contends that this argument is without merit.

### **The PCR Court did not err in dismissing Petitioner's application for failure to prosecute.**

Petitioner's PCR hearing commenced with Petitioner wishing to relieve Counsel. It is important to note that prior to Counsel's representation of Petitioner, Petitioner was represented by at least two prior appointed attorneys. At the PCR hearing, Petitioner expressed his desire to relieve Counsel because he believed that he was conspiring with the State against him. App. 276, ll. 17-19. Petitioner requested that Counsel stay to represent the straw man corporation while Petitioner himself would represent the secured party. App. 278, ll. 10-15. Petitioner then advised the PCR Court that he would represent himself. App. 279, l. 14. The PCR Court advised Counsel that he would be relieved, and Counsel asked the Court if he could advise Petitioner of the potential downfalls of representing himself. App. 279, ll. 20-22. Counsel conferred with Petitioner and Petitioner then indicated again that he wished to represent himself. App. 280, ll. 2-3. Petitioner again began arguing with the PCR Court about whether Counsel could represent the straw man corporation. Counsel again reaffirmed that he was ready and willing to represent Petitioner. Finally, after more arguing, the PCR Court relieved Counsel and gave Petitioner a short recess.

Petitioner indicated that his witnesses were not present. App. 285, ll. 14-15. The PCR Court informed him that he could take the stand and testify and Petitioner declined. App. 285, l. 16 – App. 286, l. 1. Petitioner then moved for summary judgment on the pleadings and the PCR Court dismissed the case for failure to prosecute. App. 256, ll. 2-6.

### Analysis

First, Respondent contends that any issue concerning Petitioner's competency is not preserved for review. Petitioner's competency was never called into question and no objections were made during the PCR hearing concerning his competency. As a result, this issue is not preserved for appellate review. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974). If an issue is raised but not ruled upon, it is not preserved for appeal. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (1996). Only a matter that has been ruled on below can be reviewed; otherwise, the appellate court would be exercising original jurisdiction. Gee, 262 S.C. 373, 204 S.E.2d 727. See Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."); State v. Sheppard, 391 S.C. 415 --, 706 S.E.2d 16, 20 (2011) ("Our law is clear that an issue may not be raised for the first time on appeal."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellant must present both his issues and arguments to the lower court and obtain a ruling before presenting issues and arguments on appeal). Issue preservation rules are meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011).

Next, it is well-established law that a PCR applicant is not constitutionally required to be competent to proceed on a PCR hearing.

A PCR action is a civil action. See Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002) (citing 17 S.C. Jur. 2 (1993) ("State post-conviction relief is a civil action by which a person convicted of, or sentenced for, a crime, and who is either detained or faces a possibility of detention, institutes a proceeding to challenge a court's conviction or sentence on constitutional grounds.")). Therefore, the constitutional protections that forbid a criminal trial of a mentally incompetent defendant do not apply.

Council v. Catoe, 359 S.C. 120, 125, 597 S.E.2d 782, 784-85 (2004).

Lastly, Respondent would point out that Petitioner had no problems concerning his competency at trial and has not provided this Court with any supporting facts or documentation to corroborate a claim of incompetency at any time other than the baseless assumption that he was incompetent at the PCR hearing. There is certainly evidence to support the PCR judge's dismissal for failure to prosecute, where Petitioner refused to call witnesses or present his case before the PCR Court.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issue discussed above fully.

Respectfully submitted,

ALAN WILSON  
Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General  
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By:



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**February 26** 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County  
The Honorable William Jeffrey Young, Circuit Court Judge

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ALTONY BROOKS,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

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**CERTIFICATE OF SERVICE**

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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:

**Robert M. Pachak, Esquire  
S.C. Commission on Indigent Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201**

This 26<sup>th</sup> day of February, 2016.

  
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ELIZABETH MCLELLAN  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

February 26, 2016

The Honorable Daniel E. Shearouse  
Clerk of Court, Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

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FEB 26 2016

**SC SUPREME COURT**

**Re: Altony Brooks v. State of South Carolina**  
**Appellate Case No. 2015-001610**  
**Lower Court Case No. 2011-CP-08-2266**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Justin J. Hunter  
Assistant Attorney General  
SC Bar No. 101254

JRJ/em  
Enclosures

cc: Robert M. Pachak, Esquire  
Trisha Allen, Victim Services