

**C. HOLMES**  
P O Box 187  
Sullivans Island, SC 29482  
843.883.3010

**RECEIVED**

MAR 29 2017

SC Court of Appeals

24 March 2017

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Holmes v. Becker et al

App. Case No. 2017-000266

New case law from the Court of Appeals:

Charles Thomas Brooks, III, Appellant, v. South Carolina

Commission on Indigent Defense and Office of Indigent Defense,

Respondents. Appellate Case No. 2014-00247.

Dear Jenny:

We are writing to provide timely supplement as follows including, but not limited to, pertinent new case law in *Brooks v. CCCID and OID*. The previous correspondence is incorporated in full by reference.

Significantly and materially, the December 2009 order from an unrelated case is objectionable as hearsay. In *Mizell v. Glover*, the South Carolina Supreme Court found: "We find persuasive the jurisprudence developed by the Fourth Circuit and other federal

courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320 (E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. *Id.* (Citing 5 John H. Wigmore, *Wigmore on Evidence* § 1671a (James H. Chadbourn rev.1974) (citations omitted)).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002).

“The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Tieco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility

determinations).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002). Extrinsic material from unrelated matter then stayed pending appeal and later superseded on appeal is hearsay and, therefore, inadmissible. The Appellant is prejudiced by denial of meaningful opportunity to be heard including, but not limited to, denial of the statutory and case law right to object to false, unverified petition which is fatally flawed, which is not itemized, and which wrongfully fails to comply with legal interest.

Moreover, from the *Brooks* case, the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, “All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) (“[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.”); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

In sum, Appellant respectfully submits the requested information. Please do not hesitate to contact us with any questions. Thanking you for your kind consideration, I remain

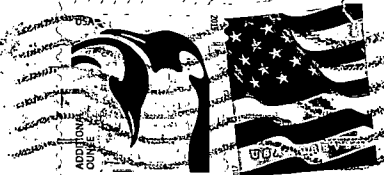
Yours very truly,

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

cc  
Opposing counsel  
1201 Main Street  
Columbia, SC 29201

CHARLESTON SC 294

27 MAR 2017 PM 3 L



RECEIVED

MAR 29 2017

SC Court of Appeals

*COA*

Clerk, SCCOA  
1220 Senate St.  
Columbia, SC 29201

29201+3769

