

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Certiorari to Supreme Court County
Honorable William Jeffrey Young, Circuit Court Judge

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ALTONY BROOKS,

S.C. SUPREME COURT
PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-001610

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether petitioner's case should have been dismissed with prejudice for his failure to prosecute when his competency was drawn into question?

STATEMENT

Petitioner was convicted of assault and battery of a high and aggravated nature (ABHAN) and aiding escape from custody after a jury trial held before the Hon. Kristi L. Harrington on January 12 – 13, 2009, in Berkeley County. Respective consecutive sentences of ten (10) years and two (2) years were imposed. J. Mitchell Lanier, Esq. was defense counsel. Allen Mastantuno, Esq. and Jim Courtney, Esq. were the solicitors. (App. p. 1 – p. 260).

Petitioner appealed his convictions and they were affirmed by the court of appeals on December 31, 2010. State v. Brooks, Op. No. 2010 – UP – 570. (App. p. 268-p. 269).

Petitioner filed an application for post-conviction relief on August 4, 2011. (App. p. 261- p. 267). Respondent filed a return dated December 9, 2011. (App. p. 268-p. 272). A hearing was held on April 22, 2015, before the Hon. W. Jeffrey Young. Petitioner was present and represented by Lance Boozer, Esq. Respondent was represented by Joshua Thomas, Assistant Attorney General. (App. p. 273-p. 287). On May 1, 2015, Judge Young issued an order dismissing petitioner's application with prejudice for his failure to prosecute. (App. p. 288- p. 290).

A petition for writ of certiorari was filed on December 10, 2015. Respondent filed a return dated February 26, 2016. On March 24, 2017, this Court issued an order granting certiorari and directing the parties to serve and file the appendix and briefs.

This brief of petitioner follows.

ARGUMENT

Petitioner's case should not have been dismissed with prejudice for failing to prosecute when his competency was drawn into question.

The PCR hearing started out with PCR counsel explaining that he received a couple of filings regarding his being relieved as counsel. The following colloquy then transpired between the court and petitioner:

THE COURT: I don't know. Why do you want to fire your attorney?

MR. BROOKS: I move to fire -- motion to relieve my counsel due to the fact that he is in conspiracy with the State. My whole case is pertaining with you know conspiracy and voluntary servitude you know -- to slavery, obstruction of justice, perjury and you know various claims. And the counsel that are being appointed they are not adequately representing me and not doing the things that I'm asking them to do such as ---

THE COURT: --- how many attorneys have you had in this case?

MR. BROOKS: I've had approximately three attorneys in this case, you know. brought the issue before Judge Cooper; I'm pretty sure that you are aware of it because this case has been going on for a substantial period of time.

THE COURT: I really don't know a whole lot about your case. I just came down to Charleston so I'm fresh to it. This is the first time I've ever met you.

MR. BROOKS: Yes, sir. The issue that I've got is they are calling my family and they're telling my family certain things that I can catch more time and things of this nature. And you know just telling my family lies and impeding and frustrating my litigation and my family they believe in me but when these individuals come and tell these lies and these individuals are ---

THE COURT: --- we're here on a PCR matter. I'll tell you what I'll do. I'll give you the option; you can release Mr. Boozer as your attorney and proceed today on your own or you can have Mr. Boozer be your attorney for today.

MR. BROOKS: Well, I filed a motion to intervene in this action as a living breathing man, Altony Brooks ---

THE COURT: --- well that's real good and that's fine and if you want to try this case as a living human being as yourself I'll give you the opportunity to do that. Do you want to do that?

MR. BROOKS: What I'm saying is that under the straw man corporation under title ---

THE COURT: don't give me that. That is ridiculous. I'm going to tell you right now that's a ridiculous theory you're looking at. Do you want Mr. Boozer to be your attorney today or whoever's attorney today or do you want to try it on your own?

MR. BROOKS: Well, he can represent the straw man corporation ---

THE COURT: --- okay, well that's fine. He'll stay here; you'll represent the straw man who is also known as Altony Brooks. Are you ready to proceed?

MR. BROOKS: And I'll represent the secured party.

THE COURT: You can do whatever you want to. I'll let you present your case, all right.

MR. BROOKS: Yes, sir. And I'd like to file a motion under Rule 22 to interplead this action as well to release or to bother any liability that they have on the straw man corporation as well, Your Honor.

THE COURT: Denied. Are you ready to proceed Mr. Boozer ---

(App. p. 276, line 15- p. 278, line 23).

Eventually, the PCR judge relieved PCR counsel from representing petitioner. The judge allowed petitioner to represent himself and then dismissed the case because petitioner failed to proceed. (App. p. 282, line 24- p. 283, line 22; App. p. 285, line 8-p. 286, line 6).

In Council v. Catoe, 359 S.C. 120, 597 S.E. 2d 762 (2004) the court held that a mentally incompetent petitioner was not entitled to a stay of the proceedings pending determination of his competency. Part of the reasoning behind that holding was in that case petitioner's claims were not so extraordinarily fact intensive as to require the petitioner's assistance.

Keeping Council in mind, what the PCR judge should have done in this case was to deny the request to relieve counsel and let him handle the case. He should not have dismissed the case with prejudice. Petitioner was entitled to "one bite at the apple..." Gamble v. State, 298 S.C. 176, 178, 379 S.E. 2d 118, 119 (1989)

CONCLUSION

Petitioner's case should be remanded for an evidentiary hearing with the appointment of counsel.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of April, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Honorable William Jeffrey Young, Circuit Court Judge

ALTONY BROOKS,

PETITIONER,

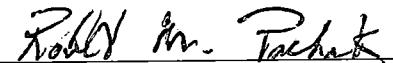
V.

STATE OF SOUTH CAROLINA,


RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner have been served on Altony Brooks, #313000, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 18th day of April, 2017.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of April, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023