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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO BERKELEY COUNTY
Court of Common Pleas

The Honorable William Jeffrey Young, Circuit Court Judge

Appellate Case No.: 2015-001610

ALTONY BROOKS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

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PETITIONER'S STATEMENT OF THE ISSUES ON APPEAL

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

RESPONDENT'S COUNTER-STATEMENT OF THE ISSUES ON APPEAL

The issue of Petitioner's competency at the PCR hearing is not preserved for appellate review where such issue was never raised to nor ruled upon by the PCR court.

The PCR court did not err in dismissing Petitioner's PCR action for failure to prosecute where the PCR court has the discretion to dispose of Petitioner's case and where Petitioner's mental competency was never called into question.

STATEMENT OF THE CASE

On the evening of August 16, 2007, Officer Anderson Shannon, a police officer with the St. Stephens Police Department, was on routine patrol in Berkeley County when he observed a person without a seatbelt on driving a vehicle. App. 51. Officer Shannon initiated a stop and discovered the driver did not have a driver's license. App. 59. Additionally, the passenger had an open beer can. App. 65. A short time later, Officer James Taylor arrived on the scene to assist in the stop. App. 63.

The occupants of the vehicle were ordered out of the car, and Officer Taylor searched the car for weapons. App. 61. A bag with crack cocaine residue was found in the vehicle, and both men were placed under arrest and into the rear of the patrol car. App. 65-66. Officer Shannon identified the driver as Mr. Darby. App. 102. The officers alerted dispatch to send a tow truck to tow the vehicle away. App. 66. While the officers were speaking with the detained men, a car drove by the scene. App. 69. The driver indicated the detained men were "family" and shouted obscenities at the officers. App. 69. The car then drove off and headed toward some nearby apartments. App. 97. Officer Taylor recognized the driver of the passing car as Petitioner Altony Brooks, who is a cousin of the detained driver. App. 106, 164. Officer Taylor was certain of his identification of Petitioner. App. 164-165, 171.

As the officers waited for the tow truck and spoke with the detained individuals, a large group of people walked over from the nearby apartments. App. 74, 168. A group of fifteen to twenty-five people approached the officers. App. 117-118. One man in the group, also identified as Darby, opened the driver's side door of the detained individual's car and attempted to locate the keys. App. 167. The officers tried to place this man under arrest and were able to get handcuffs onto one of his wrists. App. 167-168. However, while the officers struggled to make

the arrest, Petitioner and another person began shoving and hitting the officers. App. 87-88, 169-171. The officers were both certain Petitioner was the person interfering with the arrest. App. 170-171. Petitioner's action hampered the officers' ability to arrest the suspect. App. 111-112. Eventually, the suspect was able to get free and ran off. App. 171.

Officer Shannon took off in pursuit until the suspect disappeared into a bushy area. App. 83. Officer Taylor tried to determine where the suspect fled to and how he could cut off the suspect's escape. App. 169. However, as he watched the suspect flee and before he had a chance to pursue, Petitioner struck Officer Taylor in the face from a running start. App. 169, 184-185. Officer Taylor remembered excruciating pain and then falling into a ditch. App. 172-173. Petitioner went with the officer into the ditch, drew back his fist, and punched Officer Taylor again on top of the head. App. 173. Petitioner then fled in the same direction as the suspect. App. 173-174.

After the attack, Officer Taylor was unsteady on his feet, exhausted, bleeding profusely from his eye, was in extreme pain, and could not see. App. 88-89, 174. He was taken back to the police station and then to the emergency room. App. 176-177. As a result of Petitioner's attack, Officer Taylor suffered severe lacerations above and below his left eye, significant swelling, bleeding inside of the eye, pain for several days, and an orbital fracture. App. 152-155. The injuries were characterized as very serious. App. 155. Officer Taylor needed a week to regain normal comfort and was out of work for approximately one month. App. 179, 188.

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 years for ABHAN and two 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. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Petitioner moved to have Mr. Boozer relieved as counsel and proceeded pro se. After Petitioner refused to call witnesses on his behalf and moved for summary judgment on the pleadings, the PCR court dismissed the application for failure to prosecute. By an Order of Dismissal dated May 1, 2015, the PCR court dismissed the application with prejudice for failure to prosecute. Petitioner did not file a Motion to Reconsider.

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. The Brief of Petitioner was filed April 18, 2017.

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). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

- I. **Petitioner's issue whether his case should have not been dismissed because his competency was drawn into question is not preserved for appellate review. The PCR court did not err in dismissing Petitioner's PCR action for failure to prosecute where the PCR court has the discretion to dispose of Petitioner's case and where Petitioner's mental competency was never called into question.**

This Court should uphold the PCR court's ruling as Petitioner's argument is not preserved for appellate review, the PCR court has the discretion to dispose of Petitioner's case, and Petitioner's mental competency was never called into question at the lower court. At the outset of the PCR hearing, Petitioner moved to relieve Mr. Boozer. The following colloquy took place:

PETITIONER: 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?

PETITIONER: I've had approximately three attorneys in this case, you know. I 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.

PETITIONER: 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.

PETITIONER: 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?

PETITIONER: 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?

PETITIONER: 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?

PETITIONER: 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.

PETITIONER: 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. 277, l. 17 – 278 l. 23.

Before Mr. Boozer could fully address the PCR court, Petitioner interjected, stating, "I move to represent...I'll represent myself, Your Honor...what I am saying is I will relieve him. I'll relieve him and I will represent myself." App. 279, ll. 7-14.

Before the PCR court made a final decision on the motion to relieve, it allowed Mr. Boozer a brief recess to give him the opportunity to speak to Petitioner and advise him of the dangers of representing himself. App. 279, l. 20 – 280, l. 2. After conferring with Mr. Boozer, Petitioner again stated he wanted to represent himself. App. 280, l. 3. The PCR court asked again if Petitioner wanted to relieve Mr. Boozer and Petitioner informed the PCR court that he wanted Mr. Boozer to represent Petitioner's straw man corporation. App. 280, ll. 4-8. Again, the court asked Petitioner if he wanted Mr. Boozer to represent him. App. 280, ll. 15-17. Petitioner claimed Mr. Boozer was not ready to proceed, however Mr. Boozer informed the PCR court that he was ready. App. 280, ll. 18-21.

The PCR court made it clear to Petitioner that because Mr. Boozer was Petitioner's third court-appointed attorney, it was not going to appoint a new attorney if Petitioner chose to relieve Mr. Boozer. App. 280, l. 25 – 281, l. 5. Petitioner replied, "I don't have a problem going forward...I don't have a problem with that at all." App. 281, ll. 6-9. After asking Petitioner another time, the PCR court finally relieved Mr. Boozer from representation. App. 282, ll. 10-16. Petitioner continued to argue with the PCR court but never stated that he wanted Mr. Boozer to represent him. *See* App. 284. The PCR court finally ruled,

This is the only rational way to handle this. This gentleman wants to represent himself, He has the absolute right to represent himself. He wants you to represent some fictitious entity which I'm not going—as an officer of the court I'm not going to make you do. So what I'm going to do at this point in time since he does not want you, you have no further responsibility in this case.

App. 284, l. 20 – 285, l. 2.

The PCR court allowed a brief recess for Petitioner to gather his materials for his case. Once the hearing resumed, Petitioner again reiterated he was representing himself, stated he had no witnesses, and moved for summary judgment on the pleadings. App. 285, l. 23 – 286, l. 3. The PCR court then ordered the case be dismissed for failure to prosecute. App. 286, ll. 4-6.

A. Any issue regarding Petitioner's competency at the PCR hearing is not preserved for appellate review.

At no point during the PCR hearing was the issue of Petitioner's competency called into question by any party. No objections were made during the PCR hearing concerning competency and no rulings were made by the PCR court on the issue of Petitioner's 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, 420, 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).

Petitioner did not object to the PCR court's dismissal for failure to prosecute. Petitioner did not raise any issue regarding his competency, he did not present any testimony or evidence on the issue, and the PCR court did not rule on any issue regarding Petitioner's competency. Petitioner did not file a Motion to Reconsider the PCR court's ruling. Thus in entertaining such issues, this Court would be improperly exercising original jurisdiction as the issues are not preserved for appellate review. Therefore, the petition should be denied and the PCR court's ruling upheld.

B. The PCR court did not err in dismissing Petitioner's PCR action for failure to prosecute where the PCR court has the discretion to dispose of Petitioner's case and where Petitioner's mental competency was never called into question.

Even if this Court were to find the issue preserved for appellate review, the PCR court did not err in dismissing for Petitioner's failure to prosecute because the court acted within its discretion and Petitioner's competency was never called into question.

The PCR court has the authority and discretion to dispose of Petitioner's case. Petitioner had the burden of prosecuting his action, and the PCR court properly dismissed the action for his neglect in proceeding with his cause. See *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757 (1983) ("The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause"). The PCR court correctly found that Petitioner's case should be dismissed for failure to prosecute after he refused to call any witnesses and moved for summary judgment based on the pleadings. App. 285, l. 23 – 286, l. 6. Petitioner has failed to provide any evidence or argument the PCR court acted improperly, and there is clear evidence to support its findings.

Even if this Court were to examine Petitioner's unpreserved claim that his competency was called into question, the PCR court correctly acted in its discretion in dismissing the action. It is well-established law that a PCR applicant is not constitutionally required to be competent to proceed on a PCR hearing, as this Court has held:

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).

For this Court to reverse the PCR court based on Petitioner's competency would go against current precedent and require that PCR applicants be mentally competent to proceed with their PCR hearing.

Most importantly, there is no evidence whatsoever to support the claim that Petitioner's competency was called into question. Neither Petitioner nor Mr. Boozer, a very experienced PCR

attorney, ever indicated to the PCR court that Petitioner may be mentally incompetent. Petitioner never provided any testimony or documentation of present or past mental issues to the PCR court. Furthermore, Petitioner has not provided any evidence in this current appeal that he has competency issues. Thus, this Court cannot reverse the findings of the PCR court where there has been no evidence shown at any stage to support the baseless claim that Petitioner was mentally incompetent at the PCR hearing.

The test for mental competency is "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." *Carnes v. State*, 275 S.C. 353, 354–55, 271 S.E.2d 121, 122 (1980) (citing *Dusky v. U.S.*, 362 U.S. 402, 403, 80 S.Ct. 788, 789, 4 L.Ed.2d 824 (1960)). During the PCR hearing, Petitioner was able to consult with Mr. Boozer and understood the proceedings against him, and he has presented no evidence to the contrary. Petitioner's unorthodox beliefs do not call his competency to stand trial into question. Petitioner's beliefs that he represents himself as a natural person and his attorney can represent the straw man corporation in his name are commonly held beliefs with those of the Sovereign Citizen movement and, in Respondent's experience, commonly disseminated among inmates throughout the Department of Corrections. Nothing about these beliefs raise competency issues but simply indicate a commonly held Sovereign Citizen belief dealing with individual liberties and mistrust of the government. For this Court to reverse the PCR court based on Petitioner's competency would require our courts to examine the competency of every defendant who holds these Sovereign Citizen beliefs, uncommon or unorthodox beliefs, or simply beliefs that the Court does not think are "normal." Such a requirement would stray from the competency test

employed by our State and defined by the United States Supreme Court. Accordingly, there is sufficient evidence to affirm the PCR court.

CONCLUSION

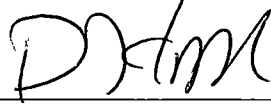
For the reasons stated above, this Court should affirm the lower court's ruling and deny the requested relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Justin J. Hunter, certify that I have today served the within **Brief of Respondent** upon Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

**Robert M. Pachak, Esquire
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 19th day of July, 2017.

Justin J. Hunter

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