

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Altony Brooks, #313000,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-08-2266

**ORDER DISMISSING APPLICANT'S
 MOTION TO ALTER OR AMEND**

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 CLERK OF COURT
 BERKELEY COUNTY, S.C.

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The above-captioned case is a post-conviction relief matter arising from an application filed August 4, 2011. Respondent made its Return on December 9, 2011. An evidentiary hearing into the matter was convened on April 22, 2015, at the Charleston County Courthouse. Applicant was represented by Lance S. Boozer, Esquire, and Joshua L. Thomas, Esquire, of the South Carolina Office of the Attorney General represented Respondent. Upon commencement of the hearing, Applicant moved to relieve Mr. Boozer as his attorney. The Court granted Applicant's request and Applicant proceeded *pro se*. After giving Applicant a brief recess, the Court directed Applicant to call his first witness. Applicant refused to call any witnesses. The Court then dismissed the action for failure to prosecute and issued a written order of dismissal filed May 8, 2015. Applicant subsequently filed a *pro se* motion to alter or amend on May 14, 2015. However, before Respondent filed a return to the motion, Applicant filed a *pro se* Notice of Appeal on June 2, 2015, appealing the order of dismissal. Robert M. Pachak, Esquire, of the Office of Appellate Defense filed a Petition for Writ of Certiorari on his behalf on December 10, 2015. Respondent filed a Return to the petition on February 26, 2016. This matter is still currently pending before the South Carolina Supreme Court.

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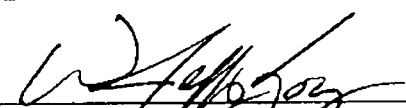
Applicant sent a letter dated October 1, 2016, in which he asked this Court why the motion had not been ruled on and requested that a hearing be held. On October 24, 2016, Respondent submitted a letter to the Court in response and stated it did not intend to respond unless the Court asked it to do so due to the Supreme Court's jurisdiction over the matter. This Court thereafter instructed Respondent to schedule the matter for a hearing in Richland County for February 13, 2017. In response, Respondent submitted a formal Return to the Motion to Alter or Amend, in which it requested that this Court dismiss the motion for the following reasons: (1) the Circuit Court does not have subject matter jurisdiction to rule on the motion because the Applicant's appeal from the order of dismissal is currently pending before the South Carolina Supreme Court; (2) there are no issues raised in the motion that would need to be resolved for error preservation purposes; (3) Applicant abandoned the motion by not providing a copy of the motion to the Court within ten days of filing as required by Rule 59(g), SCRPC, and by filing a Notice of Appeal and choosing to proceed with his appeal without ensuring the PCR judge ruled on the motion, and (4) the motion is without merit because the Court properly dismissed the PCR application due to Applicant's failure to prosecute.

This Court agrees that the South Carolina Supreme Court currently has exclusive jurisdiction over this matter pursuant to Rule 205 of the South Carolina Appellate Court Rules. Accordingly, this Court finds Applicant's motion must be dismissed.

IT IS THEREFORE ORDERED that Applicant's motion is dismissed.

AND IT IS SO ORDERED this 4th day of Feb, 2017.

Sumta, South Carolina


THE HONORABLE W. JEFFREY YOUNG
Presiding Judge, Ninth Judicial Circuit