

Court of Appeals

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SEP 17 2018

SC Court of Appeals

Brooks, Perez Appellant,) Notice of Appeal
v.)

South Carolina Court)
of Appeals)
Respondent)

Case # 2014 GS 400 3853,
2016 GS 400 587

Appellant Case # 2017-001295

Notice is hereby given that Perez Antwan Brooks does hereby appeal the final decision of the South Carolina Court of Appeals, dated October 5, 2017 and received August 4, 2018, a copy of which is attached. A general statement of the grounds for appeal is

1) Incompetent in fact:

a) There is no indication from records that competency was even a remote factor at time of plea and sentencing even with counsel knowledge that appellant suffered from severe psychological deficiencies due to the diagnosis of PTSD, TBI, seizure disorder, deemed incompetent by department of Veterans Affairs sustained during his military service in Iraq. In Bouchillon v. Collins, Cite as 907 F.2d 589 (5th Cir 1990), Jeter v. State, 308 SC, 230, 412, 2d 594 (1992) A reasonable probability exist that the appellant would have been found mentally incompetent. Due process violation

Appellant was denied his 6th amendment right to effective assistance of counsel due to plea counsel failure to advise of possible 25 years he could receive before pleading and prejudice because counsel, solicitor, and court erred in competency hearing never brought up.

Appellant carry the burden of proving that by a preponderance of the evidence that he was in fact incompetent at the time of the plea (Bruce v. Estelle, 636 F.2d 1051, 1059 (5th Cir 1976))

Supporting Facts and Arguments

- i) Solicitor states on record that a professor of Neurology at The University of South Carolina School of Medicine and also works for the Department of Veterans Affairs as a Neurologist he spoke with said Brooks had what they called Pseudoseizures is more so psychological matters. Pg 15 line 1-11 Pg 37 line 18-25. Plea attorney stated numerous incidents of record of seizures what they called pseudoseizures (paraseizure) documented along with PTSD, TBI and a competency hearing was never a remote factor. Pg 23 line 23-25 Pg 25, Pg 27 line 7-21
- ii) Solicitor clearly states on record that he went through years of paperwork and seen multiple entries to hospitals which were mental wards in Alabama, Tennessee, S.C. etc. Solicitor never stated Brooks had been deemed incompetent once in Alabama again in South Carolina March 24, 2016; April 26, 2012, - present fiduciary requested Dec 10, 2015. see attachments
- iii) In Bouchillon v. Collins, cited as 907 F.2d 589 (5th Cir 1990), Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992), A reasonable probability exist that applicant would have

For guilty plea, see also *Boykins v. Alabama*, 395 U.S. 238, 8 S. Ct. 1709 (1969) (Holding record must establish that the applicant had a full understanding of the consequences of his plea and the charge assist him)

1) Due process prohibits the conviction of a person who is mentally incompetent (*Bishop v. United States*) U.S. 961, 76 S. Ct. 440; 100 L. ed. 835 (1936) This constitutional right cannot be waived by the incompetent by guilty plea or otherwise, *Carroll v. Bela*, 421 F.2d 1065, 1067 (5th Cir 1970). Petitioner does allege that the trial court failed, upon notice to hold competency hearing denying him due process see *State v. Robinson*. Petitioner makes collateral attack on the guilty plea claiming it is invalid because he is incompetent in fact.

2) II. Appellant was denied Effective Assistance of Counsel:

Pursuant to *Strickland v. Washington* 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d. 674, 692 (1989)

Appellant was denied his 6th amendment due to plea. Counsel failure to advise him of possible sentence 25 years for Felony DUI

A) Prejudice:

1) Trial counsel persuaded Brooks into pleading. Abandoning his affirm defense of incompetence. Trial attorney informed Brooks because of previous trials with defendants being convicted by a 10 or more jury. He also informed Brooks that judge ~~was~~ would

he's convicted then there was nothing that the judge could do at that point. Counsel also used appellant's spouse and mother to assist in his coercion. Because Counsel knew that appellant's spouse and mother trusted him and believed what he stated about judge being lenient and not giving appellant a huge amount of time or sentence because judge understood that appellant case was a unique and not a typical DUI case.

3) Professional Standard:

Brooks' trial counsel erred in neglecting to do any investigation regarding Brooks' medical history after counsel was informed that Brooks was hospitalized for mental problems several times in the past and being deemed incompetent previously in Alabama and again in South Carolina. Trial Counsel erred in not having a competency hearing, violating Brooks' due process as noted in Strickland. Counsel has a duty to make a reasonable investigation.

Appellant is requesting emergency motion for relief to vacate sentence under Rule 60(b)(2)(b4)(b6). Appellant is requesting emergency injunction for immediate release while appeal is pending under Rule 7. Appellant request under Rule 73e to be released under Supercaution bond. Under rule 29 appellant request acquittal because of due process violation. Furthermore appellant request a order to show cause under injunction immediately due to high risk of injury or death because of no medical treatment, ~~and~~ ^{improper} treatment and negligence mainly through the duration of imprisonment but specifically over the last 6 months being hurt about 4 to 6 times. Please see attached letter that provide details/reasons for immediate release injunction.

The appellant was at Kirkland and was seriously injured in shower due to non handicap accessibility.

Appellant was at Lee Correctional where he was robbed and beaten and he sustained blows/hits to head, loss of vision, permanent ear damage and broken nose. Appellant has not had any follow up treatment and claims to still feel some pain from injuries.

1) Appellant was at Lee Correctional during the riot where he received injuries from being trampled out of his wheel/chair, he witnessed the killings of the other inmates, he was also cut during that time when he was thrown from wheel/chair by the gang members. 4 days after riot appellant was transferred to Evans Correctional and then he was transferred back to Lee Correctional about 1 month later where he was called a snitch and received threats to harm him.

2) Appellant was then moved to Broad River Correctional to be a part of Mental Health program but once at Broad River he received more threats from gang members and Officers. Appellant has been beaten and assaulted by officer twice at Broad River where he is currently housed. Appellant was flipped backwards and dragged on his head in his wheelchair out of his room onto the rocks. Appellant have not received any medical treatment for injuries or disabilities which are ongoing. The assault happened to the appellant on August 7, 2018 which CPT Reese and other Officers was a part of and investigations are currently being done. Investigations are being done on officers for misconduct, excessive force, trying to derail the investigation and falsifying reports. CPT Reese was recently arrested at SCDC for the same charges and CPT Reese is on appellants incident report and he was a part of the assault on appellant.

People with disabilities in South Carolina, FBI, Civil Rights and Public Corruption are currently investigating reports.

① Currently appellant is in a lockup sitting and he should not be because he is suppose to be in a mental health clinic due to severe mental health issues. Appellant is being retaliated against because of grievances, reports, having family member contact outside organizations on his behalf. Other retaliation: no medical supplies or medical treatment, being put in non approved room where there is no access to light in room so light deprivation, no prison aid to assist him, not taking showers appellant should have daily due to bleeding hemorrhoids and incontinence and other medical issues which are documented with classification and Warden. Also with the light deprivation because of his eye injury he falls trying to get to toilet. This is cruel and unusual punishment under the 8th amendment. Appellant has done the best he can under the harsh conditions and oppression of staff and inmates. Appellant has not been able to send out mail or go to legal library to get help without being denied turned away the majority of the time. The appellant fee is being held illegally against his will. Please help appellant and provide immediate relief.



DEPARTMENT OF VETERANS AFFAIRS

March 24, 2016

PEREZ ANTWON BROOKS
3515 PINWOOD RD
SUMTER SC 29154

In reply, refer to:
319/CB
File Number: 418214136
PEREZ BROOKS

IMPORTANT -- reply needed

Dear Mr. BROOKS:

We received information indicating that your disability prevents you from managing your Department of Veterans Affairs (VA) benefits. We received this information from:

- Medical Treatment Record - Government Facility Dr. Munford, competency

VA must decide if you need help managing your VA benefit payments. We will base our decision on all the evidence we already have and any other evidence you wish to send us. However, before we make our final decision, you have the right to submit any evidence, information, or statement that will present your side of the case.

Should you wish to authorize another person to speak to us regarding your case, we have included VA Form 21-0845, *Authorization to Disclose Personal Information to a Third Party*, for your convenience.

What We Propose to Do

We propose that you need the help of another person or institution, called a fiduciary, to manage your VA benefits. We will directly pay this fiduciary any money VA owes you. This fiduciary must use your payments for your benefit and is responsible to VA for their use.

We have enclosed a copy of our Rating Decision for your review. It provides a detailed explanation about our proposal, the reasons for it, and the evidence considered.



DEPARTMENT OF VETERANS AFFAIRS
VARO Columbia
6437 Garners Ferry Rd
Columbia, SC 29209

PEREZ BROOKS

VA File Number
418 21 4136

Represented By:
DISABLED AMERICAN VETERANS

Rating Decision
03/23/2016

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Army from October 8, 2002 to April 6, 2005. You filed a new claim for benefits that was received on December 10, 2015. Based on a review of the evidence listed below, we have made the following decision on your claim.

DECISION

A finding of incompetency is proposed.

EVIDENCE

- Letter from Lorell Munford, MD, received December 10, 2015
- Veteran's Claims Assistance Act (VCAA) Letter, Dated January 26, 2016

REASONS FOR DECISION

Competency to handle disbursement of funds.

A mentally incompetent person is defined as one who, because of injury or disease, lacks the mental capacity to control or manage his or her own affairs, including disbursements of funds without limitation. Where there is a doubt as to whether the beneficiary is capable of administering his or her funds, such doubt will be resolved in favor of competency.

We received evidence from your physician that you are unable to manage your financial affairs.

Since there is a definitive finding of incompetency by a physician in this case, and you are not shown to be able to manage personal affairs to include disbursement of funds, we propose to make a determination of incompetency for VA purposes.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.

ATTN: Brandon (Case Manager)

RE: The State of South Carolina, Respondent v.
Perez Brooks, Appellant; Case No. 2017-001295

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