SUPREME COURT OF UNITED STATES

1f FIRST STREET N.E. WASHINGTON, DC 20543

Case#

Altony Brooks vs Johnston, Salisa Fludd, Kris jacumin, Berkeley County Sheriffs office, ofc john doe, oFc Greene, Nurse John Doe

Altony Brooks vs State of South Carolina

Dear Clerk

Enclosed is a copy of petitioner writ of certiorari please have the documents filed and returned to me.

Thank you, Altony Brooks

Question

The court of Appeals erred when it denied petitioner the Right To file his petition for rehearing Denying him A extension of TIME TO PERFECT HIS APPEAL.

The court of Appeals file its judgment in case 21-7115 on September 22, 2022, [petitioner submit that before he could receive the order in the mail. Defendants Berkeley County Sheriff's Office had him arrested on September 26, 2022. Petitioner submit that he made bail on the false allegation September 30th 2022, and request for a petition rehearing in banc timely. Thereafter petitioner request that the court grant him A extension of time to perfect the brief for his motion for rehearing en banc. During these times plaintiff was arrested by defendant Berkeley County Sheriff's office on November 23rd 2022. The court denied petitioner request for time to brief his motion for rehearing en banc. In petitioner request he stated that he had over 6 cases in the lower and higher court that he was the only counsel in those cases and that he needed additional time. Petitioner was denied his request for extension of time November 20 2022, at this time plaintiff did not know of the denial as he was in the adversary custody. As shown plaintiff was arrested 45 days after the arrest in September 26th 2022. On December 7th 2022 plaintiff wrote the Court of Appeals for the fourth circuit requesting that the court forward his request for a notice of appeal to the united states Supreme Court. In his request he asked that the court include the judgments in the case and send them to the court. The Court of Appeals did not forward the request to the Supreme Court and sent the letter back to the plaintiff. Plaintiff had his father right the court explaining that he was in custody of defendants and seek to file a appeal. In this instance his father sent certified mail to the us court of appeals, once plaintiff was released his father notice he wrote the court of appeals for the fourth circuit and he re sent the same letter to the United States supreme court requesting that his son be given the right to Appeal.

Petitioner submit that governmental intrusions has denied him the right to adequately brief his issues to the court and has caused financial burdens in access of woes to disable the plaintiff in adequately litigating and is done by design. Plaintiff is innocent of the offenses, did not violate the law and the burdens has been placed on him to refute all while impeding and frustrating his case and livelihood. As plaintiff is paid from his start up business and a lot of his time was spent working to catch up in bills after the posting of bail September 26 2022 and now due to government action beyond his control he's been denied the right for rehearing. Petitioner submit that *see, e.g., Wainwright v. Sykes,* 433 U. S. 72. Thus, when a prisoner files a second or subsequent habeas petition, the government bears the burden of pleading abuse of the writ. This burden is satisfied if the government, with clarity and particularity, notes petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ. The burden to disprove abuse then shifts to petitioner. To excuse his failure to raise the claim earlier, he must show cause -- *e.g.,* that he was impeded by some objective factor external to the defense, such as governmental interference or the reasonable unavailability of the factual basis for the claim -- as well as actual prejudice resulting from the errors of which he complains. He will not be entitled to an evidentiary hearing if the district court determines as a matter of law that he cannot satisfy the cause and prejudice standard. However, if he cannot show cause, the failure to earlier raise the claim may nonetheless be excused if he can show that a fundamental miscarriage of justice -- the conviction of an innocent person -- would result from a failure to entertain the claim. Pp. 499 U. S. 478-497.petitioner submit that the government intrusion of arresting him was done every time the court made a order which shows the government intent to cause him to procedural default. plaintiff submit that a look into the records of this case will show that he was arrested before the hearing on the dismissal of the state law claims by party defendants, and also

Arrested days before the initial trial in this case by defendants using the same bench warrant tactic. In this instance petitioner submit that the impediments constitute a gross miscarriage of justice on behalf of defendants intrusions of arrest throughout the pending of the case and cause for national importance to address sovereign Immunity , and insurance liability and immunity issues in the fourth circuit. Petitioner submit that he was unable to brief his appeal of the jury trial order particularly on the immunity argument that counsel briefed and was prevented by the court to further brief stating that counsel could preserve it for appeal. due to his counsel being relieved from the case, to petitioner not being able to object to the order without a hearing due to being arrested on behalf of defendants and sent to prison on contempt of court at a traffic court. Which has ultimately leave petitioner counsel less to perfect a appeal with no hands on documents and only a memory of events that's passed in a 60 day span since petitioner prevailed at trial. Petitioner submit that this gross miscarriage justice has given defendants the notion to perpetuate intrinsic and extrinsic fraud upon the court in causing obstruction of justice In acts away from the court arresting petitioner continuously and denying him adequate legal material to cause petitioner to default claims has led to the clarification of the issues in this case. petitioner submit the issues of sovereign Immunity was brought up the day petitioner was arrested at the us district court by us marshalls and held at the hearing in a stun gun belt. These acts constitutes a gross miscarriage of justice on behalf of the court and calls for correction. As shown a sequence of events has taken place and the defendants has used these tactics to attempt to get around the true facts surrounding defendants Sovereign immunity argument so the true facts of the case can be misconstrued. However petitioner was able to timely catch it with a petition for writ of certiorari as the government intrusions has caused petitioner to not brief the

issues for rehearing. And has caused the court of appeals to denie petitioner request for extension of time for rehearing and has prevented petitioner the means to litigate the claims efficiently throughout the proceedings.

arrested days before the initial trial in this case by defendants using the same bench warrant tactics.

In this instance petitioner

Question

The trial court and the court of appeals erred in granting defendants sovereign immunity contrary to clearly established law in violation of Andrew MCcal vs Batson

Petitioner submit that defendants where sued in there individual capacity for federal 8th amendment cruel and unusual punishment and state law claims of assault and battery that arouse out of the same nucleus of facts and submit that the court has supplemental jurisdiction to hear the state law claims. See. ion set forth in Article III of the Constitution confers supplemental jurisdiction over state law claims that arise out of a "common nucleus of operative facts" with substantive federal claims.2 In determining whether multiple disputes arise from a "common nucleus of operative facts," the Second Circuit asks whether the facts underlying the claims before it "substantially overlap" or whether the federal claim "necessarily brought the facts underlying the state claim before the court." Achtman v. Kirby, McInerney & Squire, LLP, 464 F.3d 328, 335 (2d Cir. 2006).3 Thus, the determination at the heart of the question of whether or not a district court possesses supplemental jurisdiction is fact-based and is necessarily made on a case-by-case basis. A district court must therefore conduct a close examination of the facts it in each case underlying the federal and state claims to ensure that the facts derive from a single occurrence or set of facts. The doctrine of supplemental jurisdiction is traditionally "a doctrine of discretion, not of plaintiff's right." Gibbs, 383 U.S. at 726. Subsection 1367(c) "confirms the discretionary nature of supplemental jurisdiction by enumerating the circumstances in which district courts can refuse its exercise." City of Chicago v. Int'l College of Surgeons, 522 U.S. 156, 173 (1997).4 Subsection 1367(c) provides that a district court "may" decline to exercise jurisdiction over a claim under subsection (a) if (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim(s) over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction;5 or (4) in "exceptional circumstances," when there are other "compelling reasons" to decline jurisdiction. 28 U.S.C. § 1367(c); Parker, 468 F.3d at 743. "Whenever a federal court has supplemental jurisdiction under section 1367(a), that jurisdiction should be exercised unless section 1367(b)[6] or (c) applies." Id. (emphasis added). Continuing, the Eleventh Circuit stated that "[a]ny one of the section 1367(c) factors is sufficient to give the district court discretion to dismiss a case's supplemental state law claims."

Petitioner submit that the statue of 28 u.s.c 1367 (c) was alleged in the initial complaint and argued in petitioner initial objection to the courts dismissal and is what gives the court supplemental jurisdiction to hear the case in defendant individual capacity. The courts ruling today dismissed plaintiff state law claims against individual defendants on the

grounds of official capacity. From the thrust of this complaint defendants where being sued in federal court for federal and state violations arising out of the same nucleus in there individual capacity.(ecfNo.1,)

Sovereign Immunity is ***not*** available to government officials who are sued in their Individual Capacity

"Defendants Kirby and Johnson were each sued in their individual capacity. The individual defendants, however, do not enjoy immunity under the Eleventh Amendment. First, with regard to plaintiff's claim for monetary damages against the individual defendants, they are not immune because plaintiff sued them in their individual capacities. In Hafer v. Melo, the Supreme Court emphasized that a plaintiff may sue a state official in his individual capacity, even though his actions were undertaken in his official capacity. Hafer v. Melo, 502 U.S. 21, 25-26, 31 (1991) (holding in context of 42 U.S.C. § 1983 suit that officials sued in their individual capacities are "persons" under that statute). In contrast to suits against officials in their official capacity, for which any liability would issue from the state treasury, a suit against an official in his individual capacity seeks the personal liability of the official. Because liability would issue from the individual, not the state, the state is not the real party in interest, and the Eleventh Amendment does not bar the action. Id. at 25-26; accord, e.g., Alden v. Maine, 527 U.S. 706, 756 (1999) ("Even a suit for money damages may be prosecuted against a state officer in his individual capacity for unconstitutional or wrongful conduct fairly attributable to the officer himself, so long as the relief is sought not from the state treasury but from the officer personally."); see also Erwin Chermirinsky, Federal Jurisdiction 429 (4th ed. 2003) ("[I]f the suit is against an officer for money damages when the relief would come from the officer's own pocket, there is no Eleventh Amendment bar even though the conduct was part of the officer's official duties."); cf. Ernst v. Rising, 427 F.3d 351, 358 (6th Cir. 2006) ("The [states'] immunity also applies to actions against state officials sued in their official capacity for money damages." (emphasis added)). Because the individual defendants are only sued in their individual capacities, the court finds that they are not immune with regard to plaintiff's federal law claims for money damages."

- *Wilcox v. Tennessee, 2008 WL 4510031 (USTNED 9/30/08)*

In this instance the court dismissed Johnston, fludd, and Johnston

from the case when it elected to dismiss Berkeley county Sheriffs office from the case on immunity grounds. see. *"Absent waiver by a State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court, a bar that remains in effect when state officials are sued for damages in their official capacity."*

- Kentucky v Graham, 473 US 159 (1985)in this instance The governmental entity is not liable for a loss resulting from: (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude; In this instance defendants Johnston, jacumin and fludd acts of tasing petitioner 3 times in 66 seconds constitute malice and a intent to harm and thus Berkeley County Sheriffs office is liable for that loss especially since the jury has found defendants guilty for a 8th amendment violation of cruel and unusual punishment. Another difference between individual- and official-capacity suits concerns affirmative defenses. Officials sued individually may assert personal immunity defenses such as qualified immunity. The defense of qualified immunity, however, is not available in an official-capacity action. Instead, the only immunities that can be asserted in an official-capacity action are those defenses that the governmental entity possesses, such as State immunity under the Eleventh Amendment. See *Graham*, 473 U.S. at 166-67. Plaintiff objects and state that this case is not a official capacity suit and that defendants BCSO. See see the courts order june 25 2021 at pg6 lines. Initially, plaintiff argues that BCSO voluntarily invoked the court's jurisdiction when then existing defendant suggested in a motion to dismiss that BCSO should be substituted as the proper defendant for plaintiff state law claims. 9 ecf No.26-1) plaintiff fails to note that the BCSO was not a party to the litigation at that time and was thus not the party requesting substitution. It was the individual defendants that made Dethe request to be dismissed from the state law claims as they were not proper parties to the SCTCA. Plaintiff submits that defendants admit that defendants where individual defendants and where brought in by the state Statue S.C.Code Ann. 15-78-70[c] In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party

defendant. moreover see. Second, we note that Johnston does not point to any prejudice from a delay in effecting service on her. Nor does it seem that she could. Johnston was represented by the same attorneys as her co-defendants, who filed a notice of appearance on her behalf; she presumably was fully aware of the case as it proceeded. Indeed, through counsel, Johnston was able to advise the district court, during the service window, that Brooks's complaint misspelled her name and misidentified her title. Defendants fail to note that the individual defendants in this case where never dismissed from this action. so though the court utilized S.C Code 15-78-70(c) and substituted the party defendant it does not relinquish the personal claims for assault and battery, and outrage as they are intentional torts of state law.see.The governmental entity is not liable for a loss resulting from:(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;in this instance defendants Johnston, jacumin, and fludd are liable for the claims of assault and battery and ourtrage. As these are intentional torts. that Immunity does not cover, South Carolina formerly afforded immunity to both governmental and charitable entities. We eliminated the State's immunity from suit based upon its contractual obligations in Kinsey Construction Company Inc. v. S.C. Department of Mental Health, 272 S.C. 168, 249 S.E. (2d) 900 (1978). Thereafter, we abolished charitable immunity in Fitzer v. Greater Greenville South Carolina Young Men's Christian Association, 277 S.C. 1, 282 S.E. (2d) 230 (1981). This Court's view of the antiquated doctrine of sovereign immunity was foreshadowed *245 in the dissents in Boyce v. Lancaster County Natural Gas Authority, 266 S.C. 398 at 403, 223 S.E. (2d) 769 at 771 (1976) and Belue v. The City of Spartanburg, 276 S.C. 381 at 384, 280 S.E. (2d) 49 at 50 (1981).

The trend towards abolition of sovereign immunity in other jurisdictions was recognized by the South Carolina Court of Appeals in Shea v. State Department of Mental Retardation, 279 S.C. 604, 310 S.E. (2d) 819 (App. Ct. 1983). As noted in Shea, thirty-six other jurisdictions have abolished sovereign immunity in whole or in part some judicially, some legislatively.

More than twenty years ago this Court noted that the doctrine had come under fire as being "archaic and outmoded." McKenzie v. City of Florence, 234 S.C. 428, 435, 108 S.E. (2d) 825, 828 (1959). The Court suggested that any change of the doctrine should come from the legislature. Id. The Court has expressly urged the legislature to address the rule. Copeland v. Housing Authority of Spartanburg, 282 S.C. 8, 316 S.E. (2d) 408 (1984); Belton v. Richland Memorial Hospital, 263 S.C. 446, 211 S.E. (2d) 241 (1975). The exceptions that have been carved out by the legislature reflect a scattered patchwork of sovereign liability that lacks continuity, logic or fairness.[1]

*246 Even in affirming the continued validity of the rule, the Court has heretofore expressed "serious reservations about the soundness and fairness of the doctrine." Belton v. Richland Memorial Hospital, 263 S.C. at 451, 211 S.E. (2d) 241.

It is not necessary to laboriously analyze the doctrine and its inequities. Few principles of modern law have been so uniformly criticized. See, Holytz v. Milwaukee, 17 Wis. (2d) 26, 115 N.W. (2d) 618 (Wis. 1962). Sovereign immunity can no longer be tolerated in this State.

We next consider how we can fairly and efficiently accomplish the abolition of sovereign immunity.

We hold the abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat or tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. The exercise of discretion includes the right to be wrong.

The legislature may find it necessary to take some action to prepare the state and local subdivisions of government for their new tort liability. For that reason we delay the implementation of this decision to allow the legislature to address any problems or hardships created by the abrogation of sovereign immunity. Other states have recognized the potential problems and have abolished sovereign immunity prospectively.

We hereby abolish the doctrine of sovereign immunity as it applies to the state and all local subdivisions of the government, subject to the following limitations:

(1) Sovereign immunity will not bar recovery in this case; (2) Sovereign immunity will not bar recovery in any case currently pending or in those filed on or before July 1, 1986, provided the defendant has liability insurance coverage. Recovery shall not exceed the limits of the liability insurance coverage. (3) Sovereign immunity shall not apply to any case filed after July 1, 1986. *247 (4) This opinion does not abolish the immunity which applies to all legislative, judicial and executive bodies and to public officials who are vested with discretionary authority, for action taken in their official capacities.

By this opinion, we expressly overrule all previous decisions of this Court which uphold sovereign immunity. See Appendix A.

Batson's remaining exception is without merit, and is affirmed pursuant to Supreme Court Rule 23.

We affirm and remand for trial in accordance with this opinion.

Affirmed and remanded.

HARWELL, J., concurs.

CHANDLER, J., concurs in separate opinion.

LITTLEJOHN, C.J., and GREGORY, J., dissenting.

APPENDIX Asee.Judgments against the Greenville County Sheriff are paid by the South Carolina State Insurance Reserve Fund. However, we are unable to discern from the record in this case whether the state pays any premiums on behalf of Greenville County. See Nelson v. Strawn, 897 F. Supp. 252, 257-58 (D.S.C. 1995) (noting the same difficulty when presented with a similar question), aff'd in part, vacated in part on other grounds, 78 F.3d 579 (1996). Compare Bockes, 999 F.2d at 790 (record demonstrated that state paid 80 percent of premiums on behalf of the subscribing agencies). Thus, it is unclear whether the state treasury would be partially liable for a judgment in this case.see And the purchase of liability insurance were statutorily required,this would even more persuasively manifest an intention to protect the public46* Where insurance is required by statute to cover specific activities some policies in the past have been construed to be for the benefit of third parties the public and claimants have been permitted to bring suit directly against the carrier. malachowski v. Varro, 76 Cal. App. 207,244 Pac.936 (1926)

See even absent a clear and unambiguous statutory waiver of sovereign immunity, however, the courts of a few states have permitted recovery of a tort judgment against an insured, but otherwise immune, government entity. Note the development of the law in two jurisdictions Kentucky and Tennessee, which adhere to the waiver doctrine. in Taylor v. knox County Bd. of Educ, 292,ky,767,167S.W.2d700(1942), the court purported to be influenced by a statute showing a legislative intention to waive the immunity. in the later case of Standard Acc. Ins Co v. Peru CountyBd. of educ,72F.Supp142(E.DKy.1947), while the court relied on the taylor case, it adopted the broad waiver." A similar development is to noted in Tennessee. After finding statutory authority to purchase insurance in a provision permitting the board of education to require a bond to its bus drivers, the court found a "waiver"of the immunity. Rogers. Butler,170Tenn. 125,92 S.W.2d 414(1935). see also City of Kingsport v. lane, 167,287,s.W.2D 607(1949); tAYLOR V. COBBLE,28 tENN App 167,187 s.w.2D, 648(1945) In Bailey v. Knoxville,113,Supp.3 {ED.Tenn, 1953) affd,222 f.2d 520 (6th cir 1995), waiver" by the government entity was found despite a statute providing immunity for the function. In McCloud V. Ciy of La Follerte, 38 Tenn. App. 553,276 S.W.2d 763(1954), the court rejected the contention that recovery against the insurance proceeds was based on the use of municipal endorsements" see note 62 infra, which were found in the litigated policies in Rogers v. butler, supra and City of Kingsport v. Lane,supra. see the waiver of immunity in South Carolina(1) Sovereign immunity will not bar recovery in this case; (2) Sovereign immunity will not bar recovery in any case currently pending or in those filed on or before July 1, 1986, provided the defendant has liability insurance coverage. Recovery shall not exceed the limits of the liability insurance coverage. (3) Sovereign immunity shall not apply to any case filed after July 1, 1986. *247 (4) This opinion does not abolish the immunity which applies to all legislative, judicial and executive bodies and to public officials who are

vested with discretionary authority, for action taken in their official capacities.moreover the contractual relationship as described in mccall waives immunity on behalf of the states. see. We eliminated the State's immunity from suit based upon its contractual obligations in Kinsey Construction Company Inc. v. S.C. Department of Mental Health, 272 S.C. 168, 249 S.E. (2d) 900 (1978). Thereafter, we abolished charitable immunity in Fitzer v. Greater Greenville South Carolina Young Men's Christian Association, 277 S.C. 1, 282 S.E. (2d) 230 (1981). This Court's view of the antiquated doctrine of sovereign immunity was foreshadowed *245 in the dissents in Boyce v. Lancaster County Natural Gas Authority, 266 S.C. 398 at 403, 223 S.E. (2d) 769 at 771 (1976) and Belue v. The City of Spartanburg, 276 S.C. 381 at 384, 280 S.E. (2d) 49 at 50 (1981).

The trend towards abolition of sovereign immunity in other jurisdictions was recognized by the South Carolina Court of Appeals in Shea v. State Department of Mental Retardation, 279 S.C. 604, 310 S.E. (2d) 819 (App. Ct. 1983). As noted in Shea, thirty-six other jurisdictions have abolished sovereign immunity in whole or in part some judicially, some legislatively. here defendants BCSO has a contractual relationship with the state fiscal accountability insurance reserve fund for the governmental agency to procure liability insurance per statute. As shown immunity has been waived in mccall vs batson and thus the court shall overturn the verdict for trial.

Post-Conviction Relief judge erred when he failed to Rule on petitioner argument on prosecutorial misconduct by way of perjury on behalf of the prosecutor eliciting knowing perjury from Dr. Timothy Barton Osborn

Petitioner submit that he argued prosecutorial misconduct by way of perjury on behalf of Jackie Allen Mastantuno eliciting perjured testimony from Dr. timothy Barton Osborn that James warren Taylor suffered an orbital fracture before the jury to meet the element of serious bodily injury of Abhan statue SC code 17-25-30 knowing this not to be true. Petitioner submit that he filed this claim in his initial application and the court failed to rule on it. Plaintiff then filed a timely 59e motion to alter or amend the judgment and a timely appeal and the court refused to rule on the claim. Petitioner request that appellant counsel Robert pachak brief the issue and sent the court of appeals a letter requesting that he brief the issue and appellate counsel refused. Once the Appeal was denied petitioner then filed a successive application raising the same grounds and the court refused to rule on the issue. Petitioner then filed a timely 59e motion to alter or amend the judgment and the lower court again refused to entertain the motion. Plaintiff while at trial in his 1983 civil action amended the suit at trial to include this argument to be preserved for appeal see trial transcript of june26 2021. The court agreed and Joseph fletcher Anderson amended the complaint to include this argument being the lower court never ruled on the timely 59e motion.
See. The Court of Appeals reversed on the basis of the doctrine of abuse of the writ, which defines the circumstances in which federal courts decline to entertain a claim presented for the first time in a second or subsequent habeas corpus petition.

Held: McCleskey's failure to raise his *Massiah* claim in his first federal habeas petition constituted abuse of the writ. Pp. 499 U. S. 477-503.

(a) Much confusion exists as to the proper standard for applying the abuse of the writ doctrine, which refers to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions. This Court has heretofore

defined such abuse in an oblique way, through dicta and denials of certiorari petitions or stay applications, *see Witt v. Wainwright,* 470 U. S. 1039, 1043 (MARSHALL, J., dissenting), and, because of historical changes and the complexity of the subject, has not always followed an unwavering line in its conclusions as to the writ's availability, *Fay v. Noia,* 372 U. S. 391, 372 U. S. 411-412. Pp. 499 U. S. 477-489.

(b) Although this Court's federal habeas decisions do not all admit of ready synthesis, a review of these precedents demonstrates that a claim need not have been deliberately abandoned in an earlier petition in order to establish that its inclusion in a subsequent petition constitutes abuse of the writ, *see, e.g., Sanders v. United States,* 373 U. S. 1, 373 U. S. 18; that such inclusion constitutes abuse if the claim could have been raised in the first petition, but was omitted through inexcusable neglect, *see, e.g., Delo v. Stokes,* 495 U. S. 320, 495 U. S. 321-322, and that, because the doctrines of procedural default and abuse of the writ implicate nearly identical concerns, the determination of inexcusable neglect in the abuse context should be governed by the same standard used to determine whether to excuse a habeas petitioner's state procedural defaults, *see, e.g., Wainwright v. Sykes,* 433 U. S. 72. Thus, when a prisoner files a second or subsequent habeas petition, the government bears the burden of pleading abuse of the writ. This burden is satisfied if the government, with clarity and particularity, notes petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ. The burden to disprove abuse then shifts to petitioner. To excuse his failure to raise the claim earlier, he must show cause -- *e.g.,* that he was impeded by some objective factor external to the defense, such as governmental interference or the reasonable unavailability of the factual basis for the claim -- as well as actual prejudice resulting from the errors of which he complains. He will not be entitled to an evidentiary hearing if the district court determines as a matter of law that he cannot satisfy the cause and prejudice standard. However, if he cannot show cause, the failure to earlier raise the claim may nonetheless be excused if he can show that a fundamental miscarriage of justice -- the conviction of an innocent person -- would result from a failure to entertain the claim. Pp. 499 U. S. 478-497.

As shown petitioner brought the claims before the court and the court refused to rule on the issue petitioner submit that this is a miscarriage of justice and shows that he was convicted on fabricated testimony. Which constitute a gross miscarriage of justice. Petitioner sent letter of inquiry to solicitor Jackie Allen Mastantuno requesting James warren Taylor CT scans and mri's so he could have an independent doctor to review them and the ninth circuit solicitor office refused to produce the documents constituting a failure to disclose in violation of brady vs

Maryland. See The principle of Mooney v. Holohan is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." 2 A prosecution that withholds evidence on demand of an accused which, if made available, [373 U.S. 83, 88] would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals. 226 Md., at 427, 174 A. 2d, at 169. See letter of inquiry exhibit . showing that Berkeley county prosecution never complied with the request.. petitioner submit that this false imprisonment caused him to be assaulted at Hill finklea detention center while he was fighting the illegal conviction. Which prompted the civil suit in this action and now to the above court. Petitioner submit that the failure to disclose the ct scans and mris would show that the allege victim James warren Taylor did not suffer a orbital fracture as told to the jury and that the evedince would have been favorable to the defendant to prove that he did not cause serious bodily injury upon the victim and that he was framed by the prosecution and never indicted as the letter of inquiry informs the prosecutor Jackie Allen mastantuno and the Berkeley County Solicitors office that a failure to disclose would be by tacit agreement that no such authority exist and that a fraud continues void ab intitio to the ongoing unlawful imprisonment of Altony Brooks and that all damages are due and payable via tort law and in violation of united states vs tweel and trezvant vs city of tampa false imprisonment. Petitioner moves for relief in this action and for the case to be acquitted

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Altony Brooks — PETITIONER
(Your Name)

VS.

Sheila Johnston etal — RESPONDENT(S)
State of South Carolina etal.

PROOF OF SERVICE

I, Altony Brooks, do swear or declare that on this date, 21st of February, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Chris Dorsel 3 wesley Dr. Charleston SC 29407
1 First st N.E washington D C. 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 21, 2023

Altony Brooks
(Signature)

List of parties and related cases

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Appendix A Decision of state court of APPEALS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Altony Brooks, Appellant.

Appeal From Berkeley County
Judge Kristi L. Harrington, Circuit Court Judge

Unpublished Opinion No. 2010-UP-570
Submitted December 1, 2010 – Filed December 31, 2010

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Mark R. Farthing, all of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: Altony Brooks appeals his conviction for aiding a suspect's escape from police custody, arguing the trial court erred in denying his motion for a directed verdict. We affirm.[1]

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A reviewing court must uphold the denial of a directed verdict where "there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused . . . ." Id. at 292-93, 625 S.E.2d at 648. The reviewing court "views the evidence and all reasonable inferences in the light most favorable to the [S]tate." Id. at 292, 625 S.E.2d at 648.

Under section 16-9-420 of the South Carolina Code (2003), "[w]hoever aids or assists a prisoner in escaping or attempting to escape from an officer . . . shall be punished by imprisonment . . . ." Generally, "[a] defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent . . . required for a particular offense." State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000). "The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances." State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). Whether a defendant acted with the requisite criminal intent is ordinarily a question of fact for the jury, unless no evidence of criminal intent exists. Id.

Viewed in the light most favorable to the State, the State presented direct and substantial circumstantial evidence that Brooks intended to help a suspect escape police custody. While police officers attempted to handcuff the suspect, Brooks accosted and pushed the officers, interfering with their attempts to arrest the suspect. The suspect escaped, and one of the officers began to assess how to pursue the suspect. Brooks immediately attacked that officer, punching him twice. Because of Brooks's conduct, the officer was unable

to pursue the suspect. Therefore, the State presented direct and substantial circumstantial evidence reasonably tending to prove that Brooks intended to help the suspect escape police custody. Accordingly, the trial court properly denied Brooks's motion for a directed verdict.

AFFIRMED.

THOMAS, PIEPER, and GEATHERS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

Appendix B plaintiff motion to Alter or AMEND post conviction Relief Application of state court

CERTIFICATE OF SERVICE

I, The undersigned, do Hereby certify that the foregoing letter and rule 59 E motion to alter or amend Judgment this dat have been served by mailing copies thereof. Postage. Pre Paid to the following Persons this 26 dat of October 2016.

ALTONY BROWN

TO: W. Jeffery Young
215 N. Harvin St
Sumter SC. 29150.

Mark P. Brown,
308 California Ave
Myrtle Beach SC. 29577

SC Supreme court
Daniel E Shealhouse
PO Box 11330
Cola SC. 29211

Justin James Hunter
SC Attorney General
PO Box 11549
Cola SC. 2921

2016 OCT 31 PM 1:48
BERKELEY COUNTY, SC
CLERK OF COURT
MARY P. BROWN

LEGAL MAIL
MAIL ROOM

SOUTH CAROLINA Attorney General
Ashleigh R. wilson
P.O.Box 11549 Columbia S.C. 29211

RE: desclosure of documents and tangible objects in relation to Berkeley countl Prosecution of Attony Brooks of case 08-GS-08-1729 and 08-GS-08-1728 General sessions held on 1-12-09 by judge knstilea Harrington as well as relation to case 2011 CP 08-22616 in the Berkeley countl court of common Pleas.

DEAR MS. Ashleigh R. wilson,

Enclosed, Please find a Letter of inquiry requesting desclosure of James warren Taylors allege x-rays and or ct-Scans showing the allege orbital fracture as presented threu testimony by d. Allen Mastantuno and Jim courtney of DR. Timothy Barton osBon along with a request of the graud Jury indictment documents and documents showing petitioner ever gave up his unalienable rights. Please have these documents filed and respond promptly

Sincerely attony Brooks
Attony Brooks
LCI ASU RM 2 N-side
990 w. sucky Hwy
Bishopville S.C. 29010

Power of Attorney
Aisha A Greene
1010 Greentown Rd
ST. Stephen S.C. 29479
s/ Aisha Greene
AISHA GREENE

Certified mail Number 7014 1200 0002 2340 1438

Executed this 23rd day of July 2014 AD

UNITED STATES OF AMERICA

LETTER OF INQUIRY

Certified Mail Number ______________________

To: South Carolina
Assistant Attorney General Ashleigh R. Wilson
PO. Box 11549, Columbia SC 29211

RE: STATE OF SOUTH CAROLINA V. Altony Brooks, and Altony Brooks V. STATE of South Car
Case No: (2011-CP-08-2266 post conviction) and (08-GS-08-1729, and 08-GS-08-17
BERKELY COUNTY Common Pleas Court. (General Sessions Conviction
Jan 12-13-2009, Berkeley County

DEAR Ms. Ashleigh R. Wilson:

Please Provide the following information pursuant to the States Public desclosure laws to Altony Brooks, hereafter "Aggrieved Party" in respect to the right to the redress of grievance as stipulated in the constitution for the united states of America.

This request is further made Pursuant to title 42 U.S.C.A. §§ 1986, 1985 & 1983 and Title 18 U.S.C § 1621 as it applies via oath of office of each officer of oath / Affirmation who comes to know of this request.

Please Provide certified copies of the instruments upon which You rely in the STATE OF SOUTH CAROLINA'S Prosecution of Altony Brooks;

Please Provide certified copies of any contracts, bonds, chattel encumbrences, real Property or any contract upon which You rely in Your Presumption that Altony Brooks, ever waived his unalienable rights and agreed with full disclosure and knowledge that Altony Brooks, ever agreed to be treated as a colorable Person under military rule of District of Columbia's Corporate franchise "STATE OF SOUTH CAROLINA"

This request includes James warren Taylor x-rays and or CT-Scans that was allegedly taken at the Moncks Corner medical center in Moncks Corner S.C 29461, by Steven Cabotti Radiologist and DR. Timothy Barton Osbon, as the Berkeley County Prosecutors Jackie Allen Mastantuno and Jim Courtney Presented testimony of DR. Timothy Barton Osbon that James warren Taylor suffered a orbital fracture at trial.

Moreover, a letter of Inquiry requesting James warren Taylors image x-rays and ct-scans showing his alledge orbital fracture was sent to you and the Attorney Generals office on [illegible] 11th 2011, certified mail number [illegible]
[illegible] of the office [illegible]

This request is further made pursuant to S.C. Code Ann. §14-7-1770 Supp 2003) and South Carolina freedom of information request and act 30-4-15 to 30-4-1615 (1991 and Supp 2003 as a whole,

The aggrieved party request the grand jury impanelment documen including the state of S.C. Petition, Supporting materials, Judges order in compliance with S.C Code ann 14-7-1630 Supp 2003, as the aggrieved party has the right to obtain documents pertaining to the empanelment of the state grand jury which indicted defendant to ensure the grand jury was properly impaneled pursuant to S.C. Code Ann 14-7-1630 Supp 2003)

Pursuant to S.C Code Ann 14-7-1770 (Supp 2003) A defendant has a right to obtain documents pertaining to the impanelment of the State grand jury which indicted him, impanelment documents including The State of South Carolina Supporting materials and impaneling Judges order may be released to a defendant prior to trial upon a timely request, or an applicant on post-conviction relief proceeding

The aggrieved party is cullently on post conviction relief case 2011 CP-08-2246 in the Berkeley County Court of Common Pleas, Judge Stephanie P. McDonald has granted discovery and to the contrary of the order of Judge Stephanie P. McDonald, the aggrieved party move to disclose all documents listed in this letter of inquiry

on January 07 2013 I sent a letter of inquiry to the Berkeley County Solicitors office & to Jackie Allen Mastantuno requesting James Warren Taylors medical file of x-rays, and the Solicitors office failed to produce the documents,

on June 4th 2014 the aggrieved party sent a letter of inquiry to the Berkeley County Solicitors office Allen Mastantuno requesting James warren Taylors X-rays and or CT Scans that was allegedly tucken at the Hanks Corner Medical Center in Hanks Corner S.C. 29461, and has Yet to receive a response certified mail number 7014 0150 0002 0022 7146

However on January 07 2014 the aggrieved party contacted Krista A Alfano of the Berkeley County solicitors office and he called and left a message via voice mail that he's not comming off of the x-rays of James Allen Taylor,

on June 7th 2014, Post conviction Counsel Pamela Joanne Pelzer has informed that the Prosecution does not have the x-rays and or CT Scans as the Solicitor does not have the x-rays they will have to subpoena

James warren Taylor's x-rays and or ct-scans from the moncks corner Medical Center Custodian in moncks corner S.C 29461.

This letter serves as a prima facie evedince that No Such documents exist.

You are hereby granted ten (10) days from receipt of this letter plus three days return mailing to provide the documents requested and identified above, below and on pages 1, 2 and 3 of this letter of inquiry.

Silence can only be equated with fraud where there is a legal and moral duty to speak, where an inquiry is left unanswered would be intentionally misleading "US v. Tweel 550 F.2d 297-300 (1977)

Your failure to provide the documents requested herein Shall be a prima facie evedince by tacit agreement that no Such Authority or documentation exist, as to the above entitled case and that a fraud continues void ab initio as to the ongoing unlawful imprisonment of Altony Brooks, and is without authority of law, and any and all damages caused by officers and agents of the STATE OF SOUTH Carolina" Corporations fraudulent Seizure and unlawful imprisonment of Altony Brooks are set by Trezvant v. City of Tampa, 741 F.2d 336 (11th cir 1984) via Tort claim and are due and payable immediately.

I Further request that the Attorney General agree to grant Petitioner relief on the Grounds that the court lacked Subject matters jurisdiction and that the Prosecution Presented fraudulent testimony in case 08-GS-08-1729 and 08-GS-08-1728 that James warren Taylor had a orbital Fracture when there was NO Material evidence of Such and that a Grand Jury was never held.

Notice: Any response to this inquiry must be sent to aggrieved Party exactly as follows:

Aisha A. Greene / Power of Attorney
1610 Green Town Rd
St. Stephen S.C 29479
Non DEMESTIC

Altony Brooks 313000
LCI Ash RM 2 U-Side
990 Wisacky Hwy
Bishopville S.C 29010
Non DEMESTIC

Executed this 23rd day of July 2014 AD.
Month

Sincerely:
Altony Brooks
[signature]
Power of Attorney

Albert Brown 313000
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

HARY P. BROWN
CLERK OF COURT
300 California Ave
MONCK CORNER SC [redacted] 2946

1.78

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)
Case No: 2011 CP-08-2366

ALTONY BROOKS #313000
2015 MAY 14 AM 9:24
CLERK OF COURT
BERKELEY COUNTY, SC

Altony Brooks

Omnibus Motion
Motion to relieve counsel and appoint additional counsel, Declaration and
AND Notice not to destroy the tape of April 22nd 2015, September 8th 2014, November 20 2015 and August 18 2014 P.C.R Hearings, to court reporters, Joyce C Rugel, Amanda Haffleweeds and Sharon Vezer etc rule 59 E motion alter or amend the Judgment of Dismissal of case reasons

vs.

STATE OF SOUTH CAROLINA)
Respondents)

Your honor. Altony Brooks sui juris moves the court on his behalf and behalf of the debtor ALTONY BROOKS, the straw man corporation as defined in USCA section 44, and through out SC code ann 15-69-30, 15-69-50, 15-69-140, title 15-69-130 and 15-69-200, states that before the post conviction relief hearing lance S. Boozer utilized war tactics and attempted to deceive my mother valerie smalls, Asha Greene and sister Miss Brooks into believing I can recieve the entire sentence and do another 12 years if the conviction is overturned. he suggested that my mother write a letter and request that I withdraw my application, Mr. lance S. Boozer came inside the booth to speak with me before going into court and said hey your mom wanted me to give you this, he held a peice of paper to the window with my mothers writing and my mother wrote AJ dont be a fool withdraw the application. etc I told Mr. Boozer to dont play with my family and too stay away from my family and who do he think he is. Mr. Boozer allege no mam she wanted to write it. I told Mr Boozer to never in his life do that again and that I've told him about that. Mr Boozer said okay. I told Mr Boozer when we go in this court we are fileing a rule 59 E motion to alter or amend the Judgment as a Pinholster motion on all the claims we are to bring. I told Mr Boozer next we are going to file a 59 E motion to alter or amend the Judgment of Judge Stephanie P. Mcdonald erroneous order denying discovery on equal protection grounds to retrieve the alleged ct scans or x rays or to hold Jackie Hill's Institutions and the attorney General in contempt of courts I instructed that we are going to file a motion to interplead as this motion to set off and liability to the accused and a motion to reconsider.

the living breathing man Attorney Brooks to the action as a non dispensable Party under rule 24 of SCECP, Mr. Boozer allege Judge Young is not going to allow Attorney Brooks to do that and I stated why not Mr. Lance S Boozer said Judge Young is a Judge who keeps things short and is not going to allow You h do that I said okay then we will file motion and objections due to denial of due administration of Justice under Judicial canons and upholding the integrity of the courts Lance S Boozer Stated You can do that but its not going to work I Attorney Brooks stated while I informed Mr. Lance S. Boozer that IF he denies these Judicial canons then we file a motion for him to relieve his self as a recusal motion for being biased and prejudicial Mr. Lance S Boozer stated its not gone work You need to leave this alone and try to get Parales I Attorney Brooks instructed Lance S. Boozer that we will file a Summary Judgment motion and submit declarations and have Affidavits signed and admitted into evidence and amend the Particulars stating that Judge Allow Mastantuno, James E Carter presented Perjured testimony obstructing Justice by producing a doctor Timothy Barton osBod to the court owing a favor to the court stating that James warren Taylor had a orbital fracture to the Jury knowing that that did not have any X-rays or ct scans to allege such not withstanding the element of Serious bodily injury under Prosecutorial misconduct, Lance S. Boozer stated Judge Young is not going to rule on Your Summary Judgment motion. Attorney Brooks then asked Lance S. Boozer did he get that motion to relieve counsel and Lance S Boozer allege Yes. Attorney Brooks then stated why didn't You subpoena my witnesses and what You didn't put me on notice of the hearing Lance S Boozer allege he didn't receive the answer I told Lance S Boozer that he would move for a continuance on the case due to Miche Darby, Ann Marie woods, [redacted] and the rest of the witnesses not being at court I asked Lance S Boozer who the witnesses are in this case that we there and he allege he's not sure I asked Lance S Boozer how can we go to Court and You don't have all the witnesses here I told Lance S. Boozer that we would move for a continuance and he said Judge Young is not going to continue this case I stated if we not able to make a deal then we will move for rule...

lance S Boozer allege the Judge Young is not going too make a ruleing today
I Atting Brooks stated well IF he's not going to make a ruleing then you
must Know Something I dont Know. lance S. Boozer stated Im just
telling You. he stated lance S Boozer that he Relieved my time sheets
and check Stubbs from the Hi track and Dentwis Shirtard and that
we will submit them as exhibits but he doesn't think it would give
me a alibi I stated why not the dates on the tapes are wrong and
during the times on that tape I was at work when that alleged
incident allegedly took place I dont Know of this incadent I worked
In Charlotte this incadent allegedly Happen in St Stephens.
I can only present my whereabouts so that is my evedince of innocence.
Lance S Boozer alleges Yes Your right I stated I Know Im right.
during these times the lights in the room Keep flickering also informalou
and behalf the court was controlling the breaker in the light telling
Mr. Boozer to come on as he will run back too the door and waive
his hand back and forth I stated what's wrong with the light he allege
its motion ~~sensored~~ sensored its about time for us to go sir.
I stated Yeah thats why the lights Keep flickering Mr. Boozer looked
startled and stated they look we are about to go in hear your family
in the court and Ill See You inside.
I entered the court room and the court room was gloomy as I felt the
impact as soon as I came in. I looked to my right and Saw my Sister
Miss Brooks crying I stated where is Norma She said She's not coming
in and that She cant take it. I told my sister to stop crying immediately
during this time the bailiff attempted to prepare a seat for me I gradually
Sat down and jumped back up and dusted the chair off and told Him
I appreciate Him but I dont need His help preparing a seats and moved
his hand from behind in the seat with a motion for him to move from
around the seats as He was not preparing a seat for the Slaughter for me
I looked around the court room to See whos there. and as I Notice a real
Slim in black suit sitting in the Jury Pit with his legs crossed. I assumed
he may have a investment in shares or stock in the case.

as he was real attentive and Judge Young paied very close attention to him as he sat across from him. Lance S Boozer beran presenting the case and stated that I had over 50 arguments that needed to be amended to the complaint and that I Attorny Brooks had a serious hostile encounter. Many arguments that needed to be amended and a ineffective assistance of appellate counsel argument as well. Mr. Boozer advised that he retrieved time sheets and check stubs from his truck and Dentrice Shirland for Petitioner as his defense etc.

Mr. Boozer then stated that he received a email of a motion to relieve counsel in the mail. Judge Jeffery Young stated Mr. Brooks you may stand Attorny Brooks presented facts that his case surrounds civil conspiracy and that Lance S. Boozer has not amended his application upon information and belief and that Mr. Boozer is antagonizing his family and telling them that he could recieve more time. Mr. Brooks began to stutter in a lost of words and Judge Young saw the opening and shot the bar and cut Mr. Brooks off in his speach just as Lance S. Boozer indicated and the motion to relieve counsel indicated See Motion to relieve Counsel_____. it states be Lance Boozer stated Attorny Brooks was berevied and that he dont belive the Judge is going to allow him to carry on like that

Attorny Brooks asked Judge Jeffery Young did he recieve the motion to relieve counsel and Judge Young did not respond. Judge Young stated that Youve relieved 2 counsels of record and this will be your third. Your either going to represent yourself today or Mr. Lance S. Boozer is going to represent. Your Judge Jeffery Young didnt entertain any of the basis of the filed motions as Lance S. Boozer representing a conflict of interest working for the Attorney Generals office where this case was assigned in the office of the Attorney General and working with Leah Ashleigh Rotanna wilson, Matthew Friedman etc attorney who represented this case in the Attorney Generals office, etc. due to Judge Jeffery Young demeaner and tone Attorny Brooks responded and stated Lance S. Boozer is going to represent the State Prosecution Attorney Brooks all caps letters and I'm going to represent myself.

Judge Jeffrey Young stated the straw man corporation is a bunch of crap Altony Brooks stated that the state do not have charges on him and that the states issue is with the Strawman corporation ALTONY BROOKS all capital letters as defined in U.S.C.A Title 15 section 44 and that he has the commitment order where the Straw man corporation ALTONY BROOKS all caps has been committed to the Jail.

Judge Jeffrey Young stated that he dont want to hear anything about the living breathing man Altony Brooks. However, the living breathing man Altony Brooks was never mentioned. As Altony Brooks told Judge Young that he was pretty sure that he heard about the case. Judge Young stated no actually this was the first time he's heard of the case. However, Lance S Boozer just indicated that the Judge was not going to rule. Moreover, Judge Young stated he didnt want to hear anything about the living breathing man Altony Brooks so IF he didnt hear of the case where did he get this information, as Prejudice is presumed. Moreover, Judge Jeffrey Young stated that Lance S Boozer can not represent a Actitious corporation and what Mr. Brooks was going to do. Altony Brooks stated Your Honor MR Boozer is going to represent the Straw man corporation and IM going to represent myself. Judge Jeffrey Young stated Mr. Boozer can not represent a fictitious corporation and stated Mr. Boozer You can not represent a fictitious corporation. Judge Jeffrey Young stated Mr. Brooks? Mr. Boozer can not represent a fictitious corporation. So what are you going to do Altony Brooks stated Mr. Boozer is going to represent the Straw MAN corporation and IM going to represent myself. Judge Jeffrey Young stated IM not going back and forth and I'll dismiss this action so what are you going to do. Altony Brooks indicated I file a motion as Co-Counsel in this action under equal protection grounds. Judge Young expediately denied the motion. Cutting Plaintiff Altony Brooks off in speech. Altony Brooks then stated Your Honor I file a motion to intervene as provided by rule 24 of Scecr to intervene in this action. Judge Young stated You can do that but You have to do it

all the Stand. Attny Brooks Stated Your Honor I file a motion to interplead inside this action under rule 22 of SCRCP Judge Young Stated You can do that but You have to do it on the Stand. As showed Judge Jefferey Young intent was to void through procedure.

Judge Jefferey Young reiterated that Lance S. Boozer can not represent a fictitious corporation and indicated that Lance S. Boozer can pack his belongings and leave the court room. Mr. Boozer stated is that a order Your Honor; Judge W. Jefferey Young Stated Mr. Boozer You can not represent a fictious corporation; Mr. Brooks would be representing himself, Mr. Boozer Stated I will be advising my client of the dangers of self representation. Attny Brooks addressed the Court and Stated Your Honor Your violating Judicial Cannons and not upholding the integrity of the Judiciary. Judge Young Stated I dont want to hear that.

Attny Brooks told Lance S. Boozer that since the Judge dont want him to represent the fictitious corporation and dont want to appoint new counsel then advise the Judge that Lance S. Boozer would represent Attny Brooks as he is doing and Mr. Attny Brooks would represent the straw man corporation. Lance S. Boozer indicated he doesnt think that would work.

Judge Young instructed Mr. Boozer that he can not represent a fictitious corporation. Mr. Lance S Boozer asked is that a order and Judge Young Stated Yes and that he may leave the court room and dont come back.

Judge Young Stated Mr. Brooks would be representing himself and is giving him 5 minutes to get his self together. during this time Attny Brooks legal Power of Attorney was in the court room Aisha Greene, Mr. williams and Miss Brooks witness and once Attny Brooks went to the Holding cell away from the court where he could not see anything. after 5 minutes he was brought back before Judge [redacted] Young. while walking through the door Mr. Attny Brooks in Surprise realized that his witnessed Aisha Greene, Miss Brooks and Mr. Williams was not in court. Attny Brooks asked the bailiffs and the officers where did his witnessed go and they said they left. However the court removed them from the court room as the bailiffs and officers took their custody but w/ witnessed removed from the court at 11

did not know what was going on. I entered the court and stated Your Honor I move for Summary Judgment on the Pleading. Judge Young cut Mr. Attorney Brooks off in speech from further preserving the record of his summary judgment motion and stated You can either take the witness stand or call your first witness. Attorney Brooks stated Your Honor none of my witnesses are here. Judge Young stated that is your problem. following Procedure Attorney Brooks stated Your Honor I File a motion to remove the Shackles so I can present my case. Attorney Brooks was black Boxed, belly chained with leg shackles. Judge W. Jefferey Young stated I dont have to do that. Attorney Brooks then stated Your Honor I moved for summary Judgment on the Pleading and before Attorney Brooks could speak Judge Young stated this case is denied Lance S Boozer advised that Judge Jefferey Young was not going to rule on the summary Judgment motion and just as he stated Judge Young did. Moreover, Petitioner's motion to release counsel Lance S. Boozer advised the court that Attorney Brooks. Petitioner was still obtaining affidavits and declarations and that witnesses James E Courtney Solicitor, Judge Kristi Lea Harrington. Andersen Shannon Robert Office, Nisha Greene, Richie Darby, Ann Marie Woods James Warren Taylor be Subpoenaed. However, No one was in the court room and Attorney Brooks was never Placed on notice. As Attorney Brooks had the right to call witnesses such as J. Allen Mashburn to be in court. following Procedure Plaintiff Attorney Brooks if needed after the ruling on Summary Judgment was going to move for a Continuance of the case do too all his witnesses not being present. with information and belief Judge Allen Mashburn was in the court room the Solicitor who tried the case but not James E Courtney the Solicitor who tried the case and Opened and examined and cross examined witnesses at trial. Judge Young abused his discretion throughout the hearing and used classic Judicial framing tactics to prevent Attorney Brooks from preserving the record.

Moreover once back at Lee Correctional Attorney Brooks contacted Office of Attorney Nisha Greene and asked her what she wasn't in the court room and what happened she alleges that that where they and her Sister Miss Brooks and Mr. William

where moved from the court room by the court staff and lance S Boozer and while out side the court room lance S Boozer informed that I would be representing my self and explaining the dangers of that and when they Aisha Greene, Miss Brooks and mr williams went to go in the court room the officers allege the case was over, as No officer of the court informed them to come back into the court. Judge W. Jeffrey Young knew my witnesses where in the court because I Pointed at them when I allege Mr lance S Boozer is telling them lies that if I had the case overturned I could receive the entire sentence over and do 12 years.

the issue is not that Altony Brooks refused to call witnesses because he did not refuse and I "rebut" that presumption that I refused to call any witnesses the issue is that Judge Jeffery Young failed too uphold the integrity of the court and abide by the South Carolina rules of civil procedure and denied Altony Brooks due course of Justice in State court.

by not entertaining the motions of summary judgment, motion to relieve shackels, motion to relieve counsel and appoint new counsel, motion to withdraw, and motion to intervene in a miscarriage of justice.

upon information and belief Jatee C. Rieger did not transcribe and true and accurate transcription of the record and the tape may be dubbed, I move to have these tapes corrected and not destroyed for appeal purposes,

It's belief that lance S Boozer will fail to object to the proposed order of Josh L Thomas as I directed before the Hearing and Judge Jeffery Young will sign off on the proposed order before I or lance S Boozer have a chance to object to the proposed order, its belief that lance S Boozer will not file a notice of appeal or file a 59 E motion to alter or amend the judgment of the order to include all my claims for relief in my application

such as interlocutory orders of orders denying discovery, motion to relieve counsel and appoint additional counsels on both orders by Judge Deadra Jefferson, Thomas Cooper Judge Jeffery Young and Stephen P mcdonald order denying discovery, refusing to remove shackels so I can present the case upon motions of Plaintiff

filed and brought before Judge Jefferey Youngs refusal to hear the summary judgment motion, denial of co counsel motion, erroneous denial of counsel as I never denounced Lance S Boozer as my counsel as I merely stated I'll represent myself and objection to failure to prosecute with denial of due course of Justice in failing to follow procedure and rule on the summary judgment before suggesting Plaintiff call his first witness or take the stand, along with Attony Brooks [strikethrough] Argument Brief to preserve the record by including all these grounds in the 59 E motion to alter or amend the judgment, under Rice v. State 409 SE2d at 394 Mcleskey v. Zant 499 US 467-468 (1991) Rice v. State and [strikethrough] 423 SE2d 127, 136 SC 1992 and

Moreover, its belief that Lance S Boozer is in conspiracy to cause Attony Brooks to procedural default his malicious prosecution claim for solicitors knowing perjured testimony to trial that James warren Taylor had a orbital fracture by Dr Timothy Barton about knowing that they dont have any ct scans or x rays and never did have ct scans or x-rays showing James warren Taylor had a orbital fracture and is why he didnt include it in the affidavit when he was instructed to see motion to relieve counsels ____
and is why he stated he would Judge Young would not rule on the argument for summary judgment and that Judge Young would not rule on it because he knows the argument would end the case in my favor on the merits as to the fact that the material facts of the argument is undisputed by the evidence that was to be presented.

Upon information and belief Judge Stephanie P mcdonald was elected to the Court of Appeals and shes in a strategical situation to sabotage Attony Brooks case and went to the court of appeals for her own purposes and also as a way to sabotage Attony Brooks case before it goes federal, or use her prestige in having the case sabotaged by other appellate court judges as a favor for Berkeley county and to prevent liability

as this place great influences on the Attorney Generals office around Ashleigh

Rayanna wilson off of the case and appointing Joshua Thompson at Josh Thompson wasn't on this case 4 months as the Attorney General removed Ashleigh Rayanna wilson off of the case very recently as I was never informed that she was off the case. As Attorney Brooks wrote Ashleigh Rayanna wilson on March 13 2015 and April of 2015 and informed her that I see the racism and that she's being directed to sell me just like James E counsel because she's black and she's doing it for whites and that I will not tolerate it.

due to these allegations the attorney General removed her and appointed a white guy Josh Thompson as him and another white female represented the State as shown prejudice is shown and presumed as they call Josh Thompson be ready to go to court with me in 3 to 4 months of that with all the display of intelligence live displayed and having over 50 arguments in which I went to trials either Josh Thompson is a Greek God with know everything at the speed of light and is the greatest man in the world or exparte communication with Judge ~~[illegible]~~ Jeffery Young's since 8 years this case and denied Attorney Brooks relief, as its 2015 the veil is off of everyone's eyes as we all know favors are being passed and in this case favors where owed its blatant, however, the State is praying on a procedural default and is what the court does not accept filings but hidden to relieve counsels when appellants are represented by counsels.

upon information and belief the court is finding in the court reporters to sabotage the record destroy tapes and obstruct justice because its no way the court is going to allow the record to look that awful as miscarriage of justice rings loud.

As its self explanatory look at this proposed order, its a attempt to substitute the whole case on the merits on a bogus argument thats untrue, ~~[illegible]~~ ~~[illegible]~~ but rule 60.B of SCCCP ~~[illegible]~~ and new ~~[illegible]~~ and the cases cited are dismissals without prejudice and "laches" deals with [illegible] hearings a trial [illegible] for not showing up at a pretrial hearing.

[illegible]

thats certaintly not the case here, petitioner never refused to call witness(s) Petitioner nimble followed Procedure and his case was dismissed, also "Links" have many dessenting opinions, its no way this case could be ended on the merits, its a classic stalling tactic and structual conspiracy to denie relief, and Judge for Judge is passing it on because Im a black man who they fill do not deserve relief.

Links v. Wabash Rail Road 370 US 626 (1962) speeks of unjustice in the united states Judicial System and that surely is the case here, for Attorney General Josh Tallmas to cite this case shows the unjust, however, this case can not be ciphered as such, this case surrounds conspiracy just as the letter I sent Judge Stephanie P. Mcdonald as stated on P9.2 of my discovery request. As it stated: a fraud continues and these Prevaricators are utilizing black codes to denie petitioner relief. As the court Judge Kristi Lea Harrington, J. Allen Mastantuno including the court reporter engaged in black codes steaming at latin metaphorical language in a attempt to decode messages in court. As on pp 151-152 lines 20-25 Dr Timothy Burton OSBORN allede James Taylor suffered a orbital fracture on the medial aspect. in latin he was saying de medio aspect. As this shows Dr. Timothy Burton OSBORN was saying that he was a tennant to a "higher lord" and that he owed a favor and for J. Mitchell Lancer or the court to not harrass him about it. As the court reporter heard this and transcribed it in english as it he said he had a orbital fracture on the medical aspect closest to his nose. See discovery request sent July 23rd 2017 to Judge Mcdonald certified mail. Moreover, the court of General Sessions, clerk of court ect was founded May 10, 1683 by the lord Proprietors of Berkeley County and this is who Timothy Burton owed a favor to and his quite knowing perjured testimony to clear a debt, just as Judge Stephanie P. Mcdonald owed a favor for loosing the G.S.V. Berkeley County case its belief Judge G. Thomas Cooper and Judge Jefferey Young owed a favor, are part of the Lord's Proprietors or connected in one form or another, as it understood these individuals are powerful and has much prestige but it does not account for the wrong that has been done.

to Altony Brooks and these individuals are looking for a technicality or procedual default to deny Altony Brooks relief from their wrong. and is why lance S. Boozer and Pamela Jeanine Lolzen failed to amend their argument as its been on the record since July 23rd 2014 and Petitioner could not amend it due to counsels actions but its on the records and Petitioner request and moves for all files to be on the Appeal record as its shown lance S. Boozer is in conspiracy to cause Altony Brooks to procedual default. Petitioner filed a rule 59 E motion to alter or amend the Judgment of dismissal of the action with the Berkeley County Court of common pleas and it was not filed. the Berkeley county Court of common pleas sent the motion on 2015 April 29 at 11:52am this motion included all claims in the application and the ~~so to be~~ arguments that was to be amended in the Post-conviction relief application. the motion and brief was returned stateing that the documents have to be filed through my attorney lance s Boozer However the courts allegedly relieved lance S. Boozer from representation, and I assume mr Boozer is still appointed due to Appellate purposes. However mr Boozer has yet too contact Altony Brooks or object to the Proposed order procedual history as applicant was never indicted by a legal grand jury or object to denial of motion for co-counsel etc moreover I filed a amended motion to Alter or amend the Judgment rule 59 E motion and included the summary Judgment motion. undisputed facts, brief and declaration along with exhibits to the court I sent it the 26th of April 2015 and the court has not returned it I assume due to counsel issues, however I request it be filed in the interest of Justice or sent too my Counsel lance S Boozer to be filed as procedual default issues arises, or simply include it with this motion or return it explaining it could not be filed

moreover Prejudice is presumed as lance S. Boozer can not give account for what took place in the court room after he left and he does not have the transcript or spoke with mrs lee Correctional Policy has counseled me to self all documents and has denied me the right to call mr Boozer

B.D.

and Im unable to make copys of letters going to him as the police takes up to a week or so as to the custom to have copies made however I do have debit forms and notations of what I sent and where as for drastic measures and in this instance I inform Mr. Bowzer to amend the application and state that I did not refuse to call my first witness as my main witness Aisha Greene was initially in court and removed from the court and when she went to come back in the case was dismissed.

Also I did not refuse to take the stand as I was speaking to Judge Young on the basis of Summary Judgment while trying to go through my paper work to give my opening [redacted] statement if need be if he denied my my motion for Summary Judgment noted and motion for continuance to subpoena my witness(s) to prepare for court however Judge Young did not give me the opportunity to give a opening statement he merely voided through procedure and suggested I take the stand or call my first witness.

I had three "legal boxes" in the court and I needed the shackels removed so I could present my case in chief by retrieving my documents to be submitted into evidence. Judge Young seen my legal Box and I pointed to it so I could present my case and he said he didnt have to do that. I reticated back to the Summary Judgment motion and he denied the case. Judge Young gave me five minutes to get myself together but I was still shackled and prevented from going into my legal work and my legal documents where still in the court room and the officer wouldnt remove the shackels or allow me to review my legal work.

Attach for the record is a letter I sent to Attorney General Ashleigh Pavanna Wilson requesting James Warren Taylor X-rays and or ct scans Certified Mail as a Prima facieu that none exist and Prosecutors James Warren Taylor Produced Purjured testimony that James Warren Taylor had a orbital fracture knowing he didnt as this exhibit was to be submitted on Summary Judgment for Prosecutorial misconduct see exhibit A. Also attach is the false Subpoena Pamela Jeanne Polzin sent me obstructing Justice alleging she sent the Subpoena and retrieve the ct scans on a film and that No one would review the films however

The subpena's allegedly where sent to the wrong hospital as James warren Taylor was treated at Trident Medical Center in north charlesr S.C 29461 and this subpena was allegedly sent to Trident hospital of charleston S.C as Ms Amanda Jeanne Rotzini never had any ct-scans as I asked her to produce them and her the attorney General Ashleigh Rayanna wilson of the Berkeley county solicitors office has yet to Produce the allege x-rays and ct-scans of James warren Taylor [illegible]
[illegible].

If necessary Affiant request that new counsel or lance S. Boozer file a notice of Appeal to the court of Appeals if Judge Young do not grant a new hearing on the basis of the Applicant being surprised and knowing where his witnesses went as the court officers removed them and did not inform where they where or where they went as the court and myself lance S Boozer knowing what from there and refusing to any length of

the Honorable order issues is failure to call a witness's in this instance the [illegible] Affiant was surprised and did not know where his witnesses [illegible] went and the court dismiss the action denying Affiant a Procedural right to one fair bite at the apple.

In [illegible] v. State, the court explained that every applicant is entitled to a full adjudication on the merits of the PCR application – or one bite of the apple – which included the right to appeal the denial of a PCR application and the right to assistance of counsel in that appeals.

[illegible] court [illegible] the right to call his witnesses [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] from the court and his [illegible] witnesses [illegible] [illegible] for applicant [illegible] without a full hearing [illegible]
furthermore [illegible]
[illegible]

failing to appear at a Pretrial and counsel not giving any sufficent reason for not appearing at said pre-trial.

In this instance Applicant stated your honor none of my witness(s) are here., and the court allege that is your Problem. moreover, Applicant was suprised and did not no where any of his witness(s) went, as they where initially in court.

As counsel lance S. Boozer could attest that they where removed and upon the witness(s) removal no one apprised them to be in court. Accordingly these events where beyond the Applicants control. Id at 503 As the officers of the court alleged the witness left, but one applicant was back at lee correctional Power of Attorney Aisha Greene advised she was removed from the court by court officers and while awaiting lance S Boozer was explaining to the witness(s) that I was representing myself and when they went to go back into the court they where told the case went over as this happened in 5 to 8 minutes mrs.

unlike Lilks v. wabash Applicant has sufficent ground why he could not call his witness(s) and request a new hearing and the dismissal of the action altered or amended as provided by rule 59 E SCRCP.

S/ Allon Br[illegible]

Allony Brooks 313000
LCI ASU 132
990 wisacky Hwy
Bishopville SC 29010

I swear under Penalty and perjury that the foregoing is true and correct the 5th day of May 2015

Exhibit 8A

letter of inquiry ex Parte requesting CT-Scans of James Warren Taylor showing allege orbital fracture as this is the document I sent concerning PCR that annulated the PCR case and why Judge Stephanie P. Mcdonald denied discovery and ruled.

also is a discovery letter I sent Stephanie P. Mcdonald I have to make copies to send, however it not be on the PCR record.

pg 16

Honorable Judge
Stephanie McDonald
300 California Ave
Moncks Corner, SC 29461

Janice M. Allen

SC Attorney General
Ashleigh Wilson
PO Box 11549
Columbia, SC 29211

Appendix C, Decision of State Court Post Conviction Relief Application

ALAN WILSON
ATTORNEY GENERAL

February 8, 2017

The Honorable Mary P. Brown
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: **Altony Brooks, #313000 v. State of South Carolina**
2011-CP-08-2266

Dear Ms. Brown:

Enclosed please find an original and a copy of an **Order Dismissing Applicant's Motion to Alter or Amend** in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Alicia A. Olive
Assistant Attorney General

AAO/bea

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
Altony Brooks, #313000,	)	Case No.: 2011-CP-08-2266
Applicant,	)	**ORDER DISMISSING APPLICANT'S MOTION TO ALTER OR AMEND**
v.	)	
State of South Carolina,	)	
Respondent.	)	

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.

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), SCRCP, 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 9th day of Feb, 2017.

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

Sumter, South Carolina

Appendix D. Decision of Court of APPEALS Denying Review of Post-conviction Relief Application

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Altony Brooks, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001610

ON WRIT OF CERTIORARI

Appeal From Berkeley County
The Honorable W. Jeffrey Young, Post-Conviction Relief Judge

Memorandum Opinion No. 2018-MO-007
Submitted October 18, 2017 – Filed February 28, 2018

DISMISSED AS IMPROVIDENTLY GRANTED

Appellate Defender Robert M. Pachak, of Columbia, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney General Justin Hunter, both of Columbia, for Respondent.

PER CURIAM: We granted a writ of certiorari to review the post-conviction relief (PCR) court's dismissal of Petitioner Altony Brooks' application for PCR. We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

Appendix E, Decision Denying petitioner Successive Application in state court.

ALAN WILSON
ATTORNEY GENERAL

September 30, 2020

The Honorable Leah Guerry Dupree
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: **Altony Brooks v. State of South Carolina**
2018-CP-08-1140

Dear Ms. Dupree:

Enclosed please find the original **Final Order of Dismissal** signed by the Honorable Edgar W. Dickson, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Benjamin H. Limbaugh
Assistant Attorney General

BHL/jj

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Altony Brooks, #313000, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No. 2018-CP-08-1140 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 25, 2018. Respondent made its return on January 2, 2019, requesting the application be summarily dismissed based upon untimeliness and successiveness to Applicant's prior post-conviction relief action.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed January 8, 2019 and filed January 17, 2019, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Applicant responded to both the Respondent's motion to dismiss and this Court's Conditional Order of Dismissal. Applicant responded with multiple documents entitled "Motion for Extension of time to object to Defendant's Proposed order of dismissal upon discovery." On March 3, 2019, Applicant sent a letter again objecting to the Conditional Order of Dismissal. Applicant argues that his current application concerns his Post-Conviction relief appellate counsel and therefore is barred from being dismissed due to being untimely and successive.

A hearing on the State's motion to dismiss was held on January 23, 2020, in the Charleston

CC: BHL/AG MHJ AB 10/2/2020

1/2

County Courthouse. This Court heard argument from both Applicant and the State as to the motion to dismiss. This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, as well as the arguments made at the hearing, and finds Applicant's allegations to be meritless.

Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 22nd day of September, 2020.

EDGAR W. DICKSON
Chief Administrative Judge
Ninth Judicial Circuit

Orangeburg, South Carolina.

3/2 20

Appendix F. Petitioner 59 EMotion of PCR that has not Been Ruled on thats been included IN 1983 civil suit

State of South Carolina

Altony Brooks, applicant	Berkeley County Court of Common Pleas
vs.	case no. 2018-CP-08-1140
	plaintiff Altony Brooks motion and affidavit and objection
State of South Carolina, respondent	to judge Edgar W. Dickson erroneous order of dismissal
	and motion to alter and amend judgement

Plaintiff Altony Brooks submit that on January, 23, 2020, that he presented facts before judge Edgar W. Dickson that he knew Judge Edgar W. Dickson worked for the state of South Carolina budgeting control board and that in this case plaintiff Altony Brooks has a lawsuit against the Berkeley County Sheriff office, which is a state governmental entity and doing so it creates a conflict of interest because the state budget and control board which is now the state fiscal accountability insurance reserve fund are one. In these instances, plaintiff requested that Judge Edgar W. Dickson agreed to recuse himself orally. Plaintiff request a hearing on the transcript of that record and upon this motion to alter amend judgment to discuss facts entirely for the record. Plaintiff further objects to Judge Edgar W. Dickson to dismissal in its entirety. Plaintiff further submits that he presented facts that his claim for perjury, prosecutorial misconduct of Jackie Allen Mastantuno and James Warren Taylor stating that James warren Taylor had a orbital fracture by testimony by a way of jury knowing these facts to be false. Plaintiff submitted that he requested these documents and pointed to these documents as exhibits on the record showing that he requested the cat scans and the x rays by a letter of inquiry to the state of South Carolina attorney general office showing that James Warren Taylor requested these documents .showing that James Warren Taylor that he did have orbital fracture. Plaintiff gave the South Carolina attorney general office 10 days plus 3 days mailing to disclose the documents per disclosure laws. Respondents did not respond Plaintiff submit that no authority exist. Plaintiff submits that these

Exhibit G

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Altony Brooks, Plaintiff, vs. Berkeley County Sheriff's Office, Captain Kris Jacumin, Sergeant Felisa Fludd, and Sergeant Sheila Johnston, Defendants.	C/A No. 9:15-cv-02677-JFA **ORDER**

This matter is currently before the Court to determine the applicability of Eleventh Amendment immunity to Defendant Berkeley County Sheriff's Office ("BCSO"). This Court ordered briefing on this issue prior to trial and heard oral argument at the final pretrial conference on June 24, 2021. Thus, this matter is ripe for review.

I. FACTUAL AND PROCEDURAL HISTORY

This lawsuit arises out of Plaintiff's claims that the individual defendants applied excessive force to Plaintiff via taser while he was in custody of the BCSO. Plaintiff's complaint includes a § 1983 claim for violations of his Eighth Amendment rights as well as state law claims for assault, battery, outrage, and negligence (collectively the "state law claims"). BCSO was not originally a party to this litigation. However, BCSO was added as a party on March 23, 2016 via the District Court's[1] order adopting the Magistrate Judge's recommendation that BCSO be substituted as the proper party for Plaintiff's state law

[1] This case was originally assigned to the Honorable Patrick Duffy and reassigned to the undersigned on remand from the Fourth Circuit Court of Appeals.

claims brought pursuant to the South Carolina Torts Claim Act[2] ("SCTCA"). (ECF Nos. 97& 110). Defendants did not file any objections to that recommendation. BCSO subsequently filed an answer to Plaintiff's amended complaint wherein it asserted Eleventh Amendment immunity as an affirmative defense. (ECF No. 114, ¶¶ 16, 26). Defendants then filed an Amended Answer where they reiterated their entitlement to immunity. (ECF No. 120 ¶¶ 16, 26).

Subsequently, Plaintiff's § 1983 excessive force claims were dismissed by Judge Duffy on Defendant's motion for summary judgment via order dated August 3, 2017. (ECF No. 224). In that order, the District Court also declined to exercise supplemental jurisdiction over Plaintiff's state law claims against BCSO and dismissed those claims without prejudice pursuant to 28 U.S.C. § 1367(c)(3)[3]. BCSO did not assert an Eleventh Amendment argument in its motion for summary judgment, but it did argue for dismissal of the state law claims on the merits. (ECF No. 176-1). Obviously, the District Court did not reach the merits arguments as it exercised its discretion to dismiss these remaining state law claims without prejudice.

Judge Duffy's grant of summary judgment in the August 3, 2017 order was ultimately reversed on appeal and remanded back to the District Court for further

[2] The SCTCA mandates that "a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant." S.C. Code Ann. § 15-78-70(c).

[3] This statute permits a district court to decline to exercise supplemental jurisdiction if the "district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3).

proceedings. (ECF No. 252). Thus, the issue of Eleventh Amendment immunity has yet to be formally addressed in this action.

II. APPLICABLE LAW

It is undisputed that a State, or an arm thereof, can waive Eleventh Amendment immunity in certain situations. For instance, a state may waive this immunity when it voluntarily removes a case from state court to federal court when the case involves state law claims and the state has waived its immunity as to these claims in state court. *Lapides v. Bd. of Regents of Univ. Sys. of Georgia*, 535 U.S. 613, 624 (2002)("[R]emoval is a form of voluntary invocation of a federal court's jurisdiction sufficient to waive the State's otherwise valid objection to litigation of a matter (here of state law) in a federal forum.").

Apart from this waiver discussed in *Lapides*, there is little guidance as to what other conduct could constitute a "constructive" waiver of Eleventh Amendment immunity. In a factually similar situation, the Ninth Circuit Court of Appeals held that the defendant "waived any Eleventh Amendment immunity it might possess by participating in extensive pre-trial activities and waiting until the first day of trial before objecting to the federal court's jurisdiction on Eleventh Amendment grounds." *Hill v. Blind Indus. & Servs. of Maryland*, 179 F.3d 754, 756 (9th Cir. 1991). In determining that the defendant had waived its ability to assert Eleventh Amendment immunity, that court explained:

> From the outset, [Defendant] knew that this action had been filed in federal court, the identity of the plaintiff, the particular matters at issue, and the relief sought. [Defendant] did not timely assert Eleventh Amendment immunity, but instead chose to defend on the merits and proceed to trial. By its conduct, [Defendant] unequivocally evidenced its consent to the jurisdiction of the federal court. [Defendant] could not belatedly withdraw that consent on the opening day of trial.

Hill v. Blind Indus. & Servs. of Maryland, 179 F.3d 754, 759 (9th Cir.1999).

However, this determination appears to be at odds with Fourth Circuit precedent. Specifically, in *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 481 (4th Cir. 2005), the Fourth Circuit stated that:

> Like other issues relating to subject-matter jurisdiction, Eleventh Amendment immunity may be asserted at any time in litigation. *Edelman* [*v. Jordan,* 415 U.S. 651, 678] (stating that "the Eleventh Amendment defense sufficiently partakes of the nature of a jurisdictional bar so that it need not be raised in the trial court"); *In re Creative Goldsmiths of Washington, D.C., Inc.,* 119 F.3d 1140, 1144 (4th Cir.1997) (considering an Eleventh Amendment defense raised for the first time on appeal).

However, that court also noted that it was difficult to describe the precise nature of Eleventh Amendment immunity as it has attributes of both subject-matter jurisdiction and personal jurisdiction. *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 481 (4th Cir. 2005)("For example, the Court has consistently held that a State's voluntary appearance in federal court effects a waiver of Eleventh Amendment immunity."); *see also Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 543 (4th Cir. 2014)("Because a defendant otherwise protected by the Eleventh Amendment can waive its protection, it is, as a practical matter, structurally necessary to require the defendant to assert the immunity. We therefore conclude that sovereign immunity is akin to an affirmative defense, which the defendant bears the burden of demonstrating.").

When discussing waiver, the Fourth Circuit stated that "[g]enerally, we will find a waiver either if the State voluntarily invokes federal jurisdiction, or else if the State makes a clear declaration that it intends to submit itself to federal jurisdiction." *Constantine*, at 481. (cleaned up).

As set forth above, the law on constructive waiver of Eleventh Amendment immunity is far from clear. However, the Fourth Circuit has repeatedly held that Eleventh Amendment immunity can be raised at any time. *Id.*; *see also Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 542 (4th Cir. 2014)("[T]he Supreme Court has described sovereign immunity as a 'jurisdictional bar' that can be raised for the first time on appeal.")(citing *Seminole Tribe of Fla. v. Florida,* 517 U.S. 44, 73, (1996)); *In re Creative Goldsmiths of Washington, D.C., Inc.*, 119 F.3d 1140, 1144 (4th Cir. 1997)("even though Maryland asserts Eleventh Amendment immunity for the first time on appeal, we will consider the defense.").

III. DISCUSSION

Ordinarily, sheriff's departments in the state of South Carolina are immune from suit in federal court pursuant to the Eleventh Amendment.

> A county sheriff is entitled to Eleventh Amendment protection, as is a county Sheriff's Department. *See Cromer v. Brown,* 88 F.3d 1315, 1332 (4th Cir.1996) ("[I]t is unclear whether the state treasury would be partially liable for a judgment in this case. However, we have considered the remaining factors relevant to the immunity analysis and conclude that, in his official capacity, Sheriff Brown is an arm of the state."); *McCall v. Williams,* 52 F.Supp.2d 611, 623 (D.S.C.1999) ("To the extent that Plaintiff alleged a separate cause of action against the Williamsburg County Sheriff's Department, this claim fails as a matter of law because the Sheriff's Department, like the sheriff, is an arm of the state and entitled to Eleventh Amendment immunity.")

Curry v. South Carolina, 518 F. Supp. 2d 661, 669 (D.S.C. 2007).

Plaintiff does not appear to contest this fact but rather is asserting that the BCSO has effectively waived its right to assert Eleventh Amendment immunity by actively participating in this litigation for over five years. Specifically, Plaintiff avers that BCSO actively engaged in discovery, consented to a transfer of venue, and admitted they were a

Appendix F Decision of united states Court of Appeals of petitioner 42 USC 1983 civil suit

No. 21-7115
United States Court of Appeals, Fourth Circuit

Brooks v. Johnston

Decided Sep 22, 2022

21-7115

09-22-2022

ALTONY BROOKS, Plaintiff-Appellant, v. SERGEANT SHEILA JOHNSTON; CAPTAIN KRIS JACUMIN; SERGEANT FELISA FLUDD; BERKELEY COUNTY SHERIFF'S OFFICE, Defendants-Appellees, and HILL FINKLEA DETENTION CENTER; OFFICER JOHN DOE; NURSE JOHN DOE; OFFICER GREENE; OFFICER JOHNSON, Defendants.

Altony Brooks, Appellant Pro Se. Christopher Thomas Dorsel, SENN LEGAL, LLC, Charleston, South Carolina, for Appellees.

PER CURIAM

UNPUBLISHED

Submitted: August 29, 2022

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Joseph F. Anderson, Jr., Senior District Judge. (9:15-cv-02677-JFA)

Altony Brooks, Appellant Pro Se.

Christopher Thomas Dorsel, SENN LEGAL, LLC, Charleston, South Carolina, for Appellees.

Before WYNN and HARRIS, Circuit Judges, and KEENAN, Senior Circuit Judge.

1 Affirmed by unpublished per curiam opinion. *1

Unpublished opinions are not binding precedent in
2 this circuit. *2

PER CURIAM

Altony Brooks appeals the district court's orders dismissing his state law claims and entering judgment in accordance with the jury's verdict in this 42 U.S.C. § 1983 action alleging excessive force in violation of the Eighth Amendment. We have reviewed the record and Brooks' arguments on appeal and find no reversible error. Accordingly, we affirm the district court's judgment. *Brooks v. Johnston*, No. 9:15-cv-02677-JFA (D.S.C. June 25 &July 6, 2021). We deny Brooks' motions to appoint counsel, for a transcript at government expense, for attorney's fees, for stay of judgment pending appeal, to disqualify/recuse Senior United States District Judge Joseph F. Anderson, Jr., and for a psychological evaluation. Finally, we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

3 AFFIRMED *3

FILED: September 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7115, Altony Brooks v. Sheila Johnston
9:15-cv-02677-JFA

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

FILED: September 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7115
(9:15-cv-02677-JFA)

ALTONY BROOKS

Plaintiff - Appellant

v.

SERGEANT SHEILA JOHNSTON; CAPTAIN KRIS JACUMIN; SERGEANT FELISA FLUDD; BERKELEY COUNTY SHERIFF'S OFFICE

Defendants - Appellees

and

HILL FINKLEA DETENTION CENTER; OFFICER JOHN DOE; NURSE JOHN DOE; OFFICER GREENE; OFFICER JOHNSON

Defendants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: September 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7115
(9:15-cv-02677-JFA)

ALTONY BROOKS

Plaintiff - Appellant

v.

SERGEANT SHEILA JOHNSTON; CAPTAIN KRIS JACUMIN; SERGEANT FELISA FLUDD; BERKELEY COUNTY SHERIFF'S OFFICE

Defendants - Appellees

and

HILL FINKLEA DETENTION CENTER; OFFICER JOHN DOE; NURSE JOHN DOE; OFFICER GREENE; OFFICER JOHNSON

Defendants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix H Decision Denial of petition of Rehearing in The US court of Appeals 4th circuit of 42 U.S.C 1983 civil suit Brooks vs Johnston Denial of extension of time)

FILED: November 18, 2022

Appendix H

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7115
(9:15-cv-02677-JFA)

ALTONY BROOKS

Plaintiff - Appellant

v.

SERGEANT SHEILA JOHNSTON; CAPTAIN KRIS JACUMIN; SERGEANT FELISA FLUDD; BERKELEY COUNTY SHERIFF'S OFFICE

Defendants - Appellees

and

HILL FINKLEA DETENTION CENTER; OFFICER JOHN DOE; NURSE JOHN DOE; OFFICER GREENE; OFFICER JOHNSON

Defendants

ORDER

The court denies the motion for extension of time to file a petition for rehearing.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: November 18, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7115
(9:15-cv-02677-JFA)

ALTONY BROOKS

Plaintiff - Appellant

v.

SERGEANT SHEILA JOHNSTON; CAPTAIN KRIS JACUMIN; SERGEANT FELISA FLUDD; BERKELEY COUNTY SHERIFF'S OFFICE

Defendants - Appellees

and

HILL FINKLEA DETENTION CENTER; OFFICER JOHN DOE; NURSE JOHN DOE; OFFICER GREENE; OFFICER JOHNSON

Defendants

ORDER

The court denies the motion for extension of time to file a petition for rehearing.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk