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Supreme Court, U.S.
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United States Supreme Court

IN RE: JAMES L. BROOKS, JR.
(JAMES BROOKS)

HABEAS CORPUS UNDER

28 U.S.C. 2241

- FROM -

A STATE COURT CONVICTION

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JAMES BROOKS 765320
UNIT D-1 B 215
JOHNSON STATE PRISON
WRIGHTSVILLE, GA. 31096

Questions Presented

ONE (1)

The State of Georgia, through its Atty. Generals' Office, in July, 1989, did conspire to remove Petitioner From the streets, and did by a Bad Faith and malicious prosecution due to my civil rights litigation, Protected by the 1ST Amendment.

TWO (2)

Petitioner Brooks had ineffective assistance of trial counsel in his criminal trial (9-20-93/9-27-93) in violation of the 6th Amendment, so deficient as it impeded him showing his actual innocence. App. "C."

THREE (3)

Petitioner Brooks had ineffective assistance of Appeal counsel (LaGrant Anthony) who allowed his case to be Closed and Archived when motion for New Trial was pending, A pre requisite to direct Appeal. App. "C."

FOUR (4)

Petitioner Challenges the reliability of Brooks v. State, 232 Ga. App. 115, 501 S.E.2d 286 (1998), as to its correctness of Interpretation which Affirmed A Bad Faith and Malicious Criminal prosecution— This challenge is set forth meticulously in Appendix "A" and "B."

Concise Statement of Case

A. This case had its original in the Juvenile Court of Fulton County, Dept. Family and Childrens Services (DFACS) on December 21, 1987, when Sarah Handford (DFACS) came to my home and questioned my to minor children (9 yrs and 12 yrs old) after a malicious and false claim by Sharonda N. Watts, a beligerent 22 yr. old stepchild I had put out about a year earlier.

b. On February 08, 1988, my 5 minor children were removed from my home under a claim of physical and sexual abuse.

c. On February 11, 1988 A preliminary hearing was held in J. Court, and I was denied a Mandatory provision of GA. Law (Have the hearing before A Judge as oppose to A Referee); "Failure to do so Voided All proceedings thereafter." Everything that happened after February 11, 1988 in the Juvenile Court through February 19, 1992, with regard to the initial claim of December 21, 1987, was, under GA. Supreme Court Decisions on point—VOID. Therefore, the State of Georgia by and through its Juvenile Court had kidnapped my Five (5) minor children and held each one until Adult hood.

d. Between 1988 and 1992, I filed 4-5 suits in

State And Federal Courts Under A Due Process Of Law Claims. No Court heard my claims And my Children NEVER Returned home EXCEPT by RUN-AWAY. Through PARENTAL Rights WERE NOT Terminated, I NEVER AGAIN had physical custody of my family, Their mother being DECEASED ON September 27, 1977, in birth of ~~that~~ our last Child - C. Brooks, Prosecutrix. She was Told by the State's key witness, Shalonda N. Watts who was not in my home, that I was responsible for their Mother's death. (She was in the hospital And died in child-birth.)

E. All the EVIDENCE Leading up to the Indictment in JANUARY, 1992, And REINDICTMENT EXTENDING the physical contact opportunity to include the time I Actually had no physical contact with C. Brooks - Prosecutrix.

F. C. Brooks RAN AWAY from Connie Steel Rita Home, According to her, She was Afraid of A Dr. J. Canter, Phd., who had told her "One day I'll get out of you what I want."

G. On February 19, 1992, I had a hearing in the JUVENILE Court WITHOUT COUNSEL, And Judge H. Johnson Chief Judge, did not give me the WARNING of proceed without COUNSEL in A "Court of Inquiry Hearing" under GA. Laws - "I was without Counsel."

H. The Due Process (Denial of Right to have the hearing on February 11, 1988, before a Judge as opposed to a "Referee" was fatal to all proceedings thereafter; I was never convicted and no Court, State or Federal, ever went to the merits of my claims.

I. The HLA Blood tests were gotten in the Juvenile Court, and the Transcript of the February 19, 1992, hearing in Juvenile Court was given to C. Brooks, according her statement, by Susann Wynn, Fulton County prosecutor, for C. Brooks to study her testimony that she gave in the Feb. 19th hearing.

J. All the evidence gathered in the Juvenile Court, Fulton County prosecutor Wynn and then Lewis Slaton, had only to prosecute in Superior Court.

NOTE:

A full and detail account of this case is set forth in _____ (28 USC 2242), pages 1-2, "Political History," hereby incorporated by reference.

28 US 2241

Chapter 153 - Habeas Corpus

Subpart (A)

"Writs of habeas corpus may be granted by the Supreme Court, any justice thereof...."

Subpart (C) (3)

"He is in custody in violation of the Constitution or laws or treaties of the United States; ...."

Petitioner James Brooks [James L. Brooks, Jr.] is in prison, GA. Department of Corrections, currently at Johnson State Prison in Georgia, under jury verdict of guilty of one count of Child Molestation and Incest; due to the Ineffective Assistance of trial Counsel in violation of his Sixth Amendment right to effective assistance of counsel in a serious criminal prosecution by the State of Georgia, in Fulton County Superior Court, Atlanta, Georgia.

Further, Petitioner was denied effective appeal counsel in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, such ineffectiveness placing Petitioners appeal and subsequent Habeas Corpus under 28 USC 2254 under the higher standards for relief in the AEDPA of Apr. 1996.

Petitioner was denied a fair trial under the Constitution and Treaty of the U.S., ratified, Universal Declaration of Human Rights.

Rule 14 (b) - 28 USC 2242 And Rule 10, Sup. Ct. Rules
Habeas Application - Continued

Paragraph 4 of 28 USC 2242: Sup. Ct. Rule 20 (4) (b)

"If addressed to the Supreme Court, A justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the Applicant is held."

Reasons why this Petition, ex parte under Sup. Court Rule 20 (b), is brought directly to this Honorable Court under 28 USC § 2241:

Political History:

A) This matter is brought to this Court under 28 U.S.C. 2241 under the gateway articulate in a number of this Courts' decisions on the principle that no person shall be held in prison/detention who is Actual Innocent of the indicted charge/crime, and or his/her conviction was due to the denial of a protected Fundamental Right as denial of Effective Assistance of Counsel in a serious criminal trial as required by the 6th Amendment to the U.S. Constitution; and a trial where assistance of Counsel was so deffective that it rendered the trial fundamentally unfair, resulting in the conviction and sentencing of an Innocent person (ma

28 USC § 2242 Continued

* 1) Petitioner Brooks, hereafter Brooks, was a civil rights activist resulting from the illegal taking of his children by Fulton County Dept. of Family and Childrens Services (DFACS) on Feb. 8, 1988. That illegal taking, under color of Legal process without Probable Cause, initiated a five (5) year struggle in both State and Federal Courts to get my children back home for they had been taken without probable Cause, NO EVIDENCE AT ALL beyond a statement of a vindictive step-daughter (21/22 yrs. old). No Court in this Country; State, Federal or County, wanted to NOR did they ENTERTAIN my Claims of a ____ blatant disregard of my and my daughters Due Process Rights under the 14th Amendment to the U.S. Constitution, and Property and Liberaity interest created by State laws, including the GA. Constitution.

A) My struggle continued giving rise to the conviction I now bring before this Court under my claim of INNOCENCE and a fundamentally unfair and constitutionally defective criminal trial on September 20, 1993 — September 29, 1993, indictment number Z 45638. (For specific details, please see: Petitioners Exhibit No. 1, Division "A", pp. 1-2; All Statement of Facts on oath and on penalty of perjury, or, where language suggest, on "information and belief.

28 USC 2242 Continued

* 2) Judgment of guilty was entered on September 27, 1993, and Motion for New Trial hearing was timely filed with 30 days.

* 3) Trial transcript was supposed to be ready on on about March 29, 1994. It was not ready and the appointed Appeal counsel, De Vorsey (Fulton County Indigent Defense) did nothing to get my trial transcript in spite of 4-5 letters to her to have the New Trial motion heard, and a transcript was needed. She with drew after I filed a Bar Complaint some six (6) months later premised upon her ineffective since Georgia provides a right to New Trial Motion hear prior to Appeal. Atty. De Vorsey's ineffectiveness denied me a property and Liberety Interest create under State procedural laws (O.C.G.A. 5-6-1 et seq.) protected by the 14th Amend. Due Process Clauses.

* 4) Another post-conviction Appeal counsel was appointed, Atty. Anthony La Grant, and he was no more effective than Atty. De Vorsey; And the former (La Grant) and Trial Judge J. Holmes Cook were peers from the same Law School - John Marshall, in Atlanta.

* 5) La Grant's ineffectiveness motivated me, Brooks, to file a mandamus to force transcription and delivery to me of my trial transcript where ten (10) months and no Transcript for New Trial motion

fair opportunity to present my ineffective counsels claims, the trial counsel's ineffectiveness as is set forth in my Brooks Exhibit "A", pages 3 thru 52 Div. "B", by being denied subpoenas for compulsory process of Atty. Sharon L. Hopkins (Trial Counsel), Atty. Anthony La Grant (Appeal Counsel - his Abandonment for about 18 months (Sept. 24, 1994 [I had Trial Transcript], him canceling my motion hearing for January, 1995, of which I did not get until October 30, 1996; well after the Effective date of Apr. 1996, the AEDPA, that LaGrant's ineffectiveness placed my habeas and Appeal under when finally taken requiring a great burden on Brooks (me), clear/convincing as opposed to "A preponderence of evidence" that would have been applicable had it not been for his (LaGrant's) Abandonment of his 6th and 14th Amendments requirement to protect my constitutional right to a Speedy disposition of my conviction, After the ineffectiveness of Trial Counsel (Ms. Hopkins) not showing my (Brooks) actual innocence to my Jury. The - result of an innocence spending now 10½ years in prison for what another done; And perhaps at the consent of the victim.

* 15) When I finally took Appeal to the GA. Court of Appeals, Case Nos. A98A0772 (Conviction),

And A98A0773, published, Brooks v. State, 232 G. App. 115, 501 S.E.2d 286, Cert. Den. (GA. Sup. Court), Sept. 18, 1998. Attached to this petition as Appendix "A." In Petitioners Exhibit No. 2, it will be shown why this Court cannot Rely on the findings and Appeal Court's determination of my Appeal.

* 16) I was given permission to Amend Brooks v. Battle, supra. Cs. #1:97-CV-1988; though I did Amend, I incorporated pertinent parts of the Dismissed Case, Brooks v. Meadows, supra. into Brooks v. Battle, id. to avoid rewriting the record already in the Northern Dist., Atlanta Div. in another part of the building - The Clerk's office. It cannot be stated with any degree of reliability that the new magistrate ever really incorporated my references - I believe Not.

* 17) The new magistrate order a return under Habeas Rule 5, as I recall, and the State's answer and documents were those it chose as I had then learned that only 1/2 (one-half) of my trial transcript had went to the Court of Appeals; i.e., 702 page, as opposed to the total record in the Clerk's office, or 1429 pages of trial Transcript.

* 18) With that knowledge, I move the Brooks v. Battle, supra. Court to require the State to submit All the records, the remaining 727 pages

standard of the AEDPA, April, 1996.

* 20) A state habeas would be futile since the case has been ruled upon by the highest Court in the State when it denied cert. in 1998, ie even though Petitioner Brooks, according to all records related to his conviction, do not show that he has ever had a hearing on his claims of ineffectiveness. And the Appeals Court claim that Counsel was ready at [9], page 290, 501 S.E.2d, (29 Brooks v. State, the holdings in Smith v. State, 255 GA. 654, 341 S.E.2d 5, at 7 (GA. Sup. Ct. 1986), citing Simpson v. State, 250 GA. 365 (2), 297 S.E.2d. 288 (1982):

> "... trial counsel had not been heard, nor was there any testimony from the lawyer who conducted the Trial."

A) Nor will or does the Court's reference in [9], i.d. "she was ready for trial at a subsequent hearing concerning revocation of Brooks' bond," (That was NOT a revocation of Brooks' bond - I was in prison, and had been locked-up since 9-23-93. The reference is to an Appeal bond on March 16 or 17, 1997, of which I sought, before making appeal after New Trial Motion on Oct. 30, 1996.) overcome the GA. Sup. Ct's holding in Smith, supra. at 255 GA. 656; and Simpson, supra. at 250 GA. at 367:

> "Any contention concerning a violation

of the Constitutional Right of Effective Assistanc. of Counsel must be made at the earliest practical moment..." [I made my claim on 9-23-Wednesday, about 11:00Am by formal suit filed and served, a copy to the Court, Judge Cook. This was one day into to trial will I observed the performance of Counsel.] (See Exhibit "A", pgs. 34-35)"... and the counsel whose proficiency is under attack should be given an opportunity to be heard," Simpson, id. at 250 Ga. at 367."

b) The above principles were cited in Lynn v. State, 181 Ga. App. 461, 352 S.E.2d 603, 604 (1986). There is no record beyond the single statement to which the Appeals Court alluded, "I was ready."

c) A State Habeas Court is precluded from over-ruling the published case, Brooks v. State, supra.

* 20) With regard to the District and Circuit Court Judges in the lower Court entertaining this habea would be a departure from the history of my litigation in them since 1988 through the denial of two properly filed habeas, supra. As shown above. It would be futile for the State and Federal Court (at the lower level) have consistantly ruled adverse to my view: Carter v. Estelle, 677 F2d 427 (5th Cir. 1982), Layton v. Carson, 479 F2d 1275 at 1276

(5th Cir 1973); St. Jules v. Savage, 512 Fed 881 (5th Cir 1975).

* 21) For centuries the writ has been esteened the best and only sufficient defence of personal freedom. Ex parte Yerger, 8 Wall. 85, at 95, 19 L. Ed. 332 (1869).

* 22) Without the "Actual Innocence" gateway in Murray v. Carrie, 477 US 479, 496, 106 S. Ct. 2639, 2649, 91 L. Ed 2d 397 (1986), and Felker v. Turpin, 116 S. Ct. 2333, 2337-2341, 518 US 651, 135 L. Ed 2d 827 (1996), Reh'g Den. and 28 USC 2241's Exception to §106(b), AEDPA; the miscarriage of Justice standard in Sawyer v. Whitley, 505 US 333, 339, 112 S. Ct. 2514, 2518, 2519, 120 L. Ed 2d 269 (1992); Schlup v. Delo, 513 US 298, —, 115 S. Ct. 851, 860-862, 130 L. Ed 2d 808 (1995), To Brooks, the writ of habeas would be suspended in violation of Article I, §9, U.S. Constitution and I would continue in prison until a max-out in 2013 or die; A truely miscarriage of Justice, 20 years imprisonment of an innocence man.

* 23) Petitioner's Exhibit #2, hereto attached will point out to the Court why the decision in Brooks v. State, supra. Is unreliable under the meaning of Lockhart v Fretwell, 113 S. Ct. 838, 842, 122 L. Ed 180 (1993), And fell below the established