

**IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT**

No. 357 WDA 2005

COMMONWEALTH OF PENNSYLVANIA

VS.

GEORGE RAHSAAN BROOKS

BRIEF FOR APPELLANT

**Appeal from Order dismissing PCRA Relief
on July 21, 2004, as being patently frivolous
and without support on the record by Honorable
Judge John A. Zottola, Allegheny County Court
of Common Pleas.**

Respectfully Submitted,

George Rahsaan Brooks

George Rahsaan Brooks, # AP-4884

SCI-Fayette

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Appellant Pro Se

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I. STATEMENT OF JURISDICTION

Jurisdiction in this Matter is conferred upon the Superior Court of Pennsylvania and pursuant to the Judicial Code, Act of July 9, 1976, P.L. 586, No. 142 § 2, effective June 27, 1978, 42 Pa. C.S.A. § 742, which provides: The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the Court of Common Pleas, regardless of the nature of the controversy, or the amount involved, except such classes of appeals as are by any provisions of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court.

II. REFERENCE TO OPINION BELOW

The Order of the Court of Common Pleas entered on July 21, 2004, at docket number s 1975-9310 and 1975-8889, attached as Exhibit "A."

III. TEXT OF ORDER IN QUESTION

AND NOW, to-wit, this 21st day of July, 2004, after a careful review of the record and finding that Petitioner's Application for Post-conviction Relief is patently frivolous and without support on the record, it is hereby ORDERED that said petition be DISMISSED pursuant to Pennsylvania Rules of Criminal Procedure 1507.

Petitioner, George Brooks, has thirty (30) days from the date of this Order to file an appeal with the Superior Court of Pennsylvania.

IV. STATEMENT OF QUESTIONS INVOLVED

1. DID THE COURT OF COMMON PLEAS ERR IN LAW AND ABUSE IT'S DISCRETION WHEN IT DENIED PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL WHEN PETITIONER ALLEGED ACTUAL INNOCENCE, MISCARRIAGE OF JUSTICE, PROSECUTORIAL MISCONDUCT, NEWLY DISCOVERED EVIDENCE, AND INEFFECTIVE ASSISTANCE OF COUNSEL?

Suggested Answer: Yes

Answered in the negative by the court below.

2. DID THE COURT OF COMMON PLEAS ERR IN LAW AND ABUSE ITS DISCRETION WHEN PETITIONER'S CLAIMS CLEARLY DEMONSTRATED ACTUAL INNOCENCE, MISCARRIAGE OF JUSTICE, PROSECUTORIAL MISCONDUCT, NEWLY DISCOVERED EVIDENCE, AND INEFFECTIVE ASSISTANCE OF COUNSEL WHEN THOSE CLAIMS WERE GENUINE ISSUES OF MATERIAL FACT WHICH WOULD HAVE ENTITLED HIM TO RELIEF?

Suggested Answer: Yes

Answered in the negative by the Court below.

3. DID THE COURT OF COMMON PLEAS ERR IN LAW AND ABUSE ITS DISCRETION WHEN IT SUMMARILY DISMISSED PETITIONER'S PETITION AS PATENTLY FRIVOLOUS WHEN THE FACTS ALLEGED IN THE PETITION, IF PROVEN, WOULD ENTITLE PETITIONER TO RELIEF?

Suggested Answer: Yes

Answered in the negative by the Court below.

V. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

The standard of Review of an order that denies Post Conviction Relief is well settled. An Order denying Post Conviction Relief is reviewed for a determination of whether the evidence of record supports the determination of the PCRA Court and whether the ruling is free from legal error. Commonwealth v. Ballard, 814 A.2d 1242, 1244 (Pa. Super. 2003).

VI. PROCEDURAL HISTORY

Petitioner filed his third PCRA Petition on or about October 17, 1991. On November 4, 1991, petitioner filed a Pro Se, Supplemental to RCRA Petition On December 3, 1991, petitioner filed another Pro Se Amendment to his PCRA Petition. On December 17, 1991, Judge Henry R. Smith, Jr. appointed a public defender. On January 18, 1996, Public Defender Christine M. Seldon filed a no merit letter. In response to said letter, Judge Terrance O'Brien filed a Notice of Intent to Dismiss the PCRA Petition on March 11, 1996. On March 22, 1996, Judge O'Brien dismissed the petition. On or about April 19, 1996, petitioner filed a Pro Se Motion For Reconsideration. Judge O'Brien denied said motion.

On April 22, 1996, petitioner filed a Pro Se, Notice of Appeal. On May 29, Judge O'Brien filed a specification in lieu of opinion.

On or about May 28, 1998, petitioner filed a Pro Se Brief in this court that was docketed at No. 999 Pittsburgh 1997. The Commonwealth, through Assistant District Attorney Sandra Preuhs, responded by brief. On or about August 1, 1998, petitioner filed a Pro Se Reply Brief. On January 20, 1999, this court affirmed the decision of the PCRA Court in a Memorandum Opinion. Unbeknownst to petitioner, the prison mailroom supervisor returned the Court's opinion back to the Prothonotary because petitioner's prison number was not on the envelope. The Prothonotary did not re-mail the court opinion and months passed before petitioner found out that a court opinion had been issued by this Court. Petitioner presented the Supreme Court with documentation verifying that he had not been served with this Court's decision. The Supreme Court

granted petitioner's Petition For Allowance of Appeal Nunc Pro Tunc, but due to State Interference by prison officials the State Supreme court dismissed the Petition For Allowance Of Appeal for failure to prosecute.

In 1994, petitioner also had a pending federal habeas corpus in the Western District docketed at C.A. No. 94-21. On or about May 13 1994, petitioner filed a Pro Se Supplemental Brief in support of his habeas corpus petition.

On July 29, 1994, the Commonwealth, through Asst. District Attorney Browman, filed its Answer to the petition, raising abuse of the writ and failure to exhaust. On August 8, 1994, petitioner filed a Pro Se Response to the Commonwealth's Answer.

On August 18, 1994, U. S. Magistrate Judge Francis X Caiazza, issued a Memorandum Opinion and Order requiring the parties to further brief the issue of abuse of the writ.

On November 21, 1994, the Commonwealth, through Asst. District Attorney Broman filed a Response Memorandum to Petitioner's Memorandum concerning abuse of the writ. On December 8, 1994, petitioner filed a Pro Se Declaration with a Motion for summary Judgment and a Brief in support thereof. On December 15, 1994, the Commonwealth was ordered to respond to Petitioner's Summary Judgment Motion.

On January 25, 1995, the Commonwealth filed their Response Brief In Opposition. On March 31, 1995, petitioner filed a Pro Se Memorandum. On June 20, 1995, Magistrate/Judge Caiazza, issued a Report recommending that the habeas corpus petition be denied.

U. S. District Court Judge Donnetta Ambrose adopted the Report and Recommendation, granted a Certificate of Probable Cause and the Federal Public

defender was appointed to represent petitioner on appeal. The case was docketed at No. 95-3439.

On or about November 29, 1995, federal public defender Karen Sirianni Gelach filed a Brief and appendix to the Third Circuit Court of Appeals and on January 2, 1996, the Commonwealth filed their brief in Opposition.

On or about January 18, 1996, petitioner through counsel filed a Reply Brief. On May 14, 1996, the U. S. Court of Appeals for the Third Circuit affirmed the Order of the district court.

On July 10, 1996, petitioner filed a Pro Se Petition For Writ Certiorari in the U.S. Supreme Court. The case was docketed at No. 96-5623. On October 7, 1996, the U.S. Supreme Court denied certiorari.

After the Pa. Supreme Court dismissed the Petition For Allowance of Appeal for failure to prosecute, petitioner filed a pro se Motion under 28 U.S. C. § 2254 on April 28, 2000 for an order Authorizing District Court to Consider Second or Successive Application for Relief under 28 U.S.C. § 2254 in the U.S. Court of Appeals for the Third Circuit.

On May 5, 2000, the Commonwealth filed a Memorandum In Opposition to Petitioner's Motion. On May 12, 2000, petitioner filed a Pro Se Memorandum of Law in Support for Habeas Corpus Relief. On May 4, 2000, the district court issued a standard Order informing petitioner that he could proceed with his petition, withdraw it, or amend it. Petitioner amended his petition. Unbeknownst to petitioner, the clerk from the Third Circuit Court of Appeals inadvertently sent his petition to the district court. While his petition was pending in the district court, the Third Circuit rendered a decision on May