

No. 11-7185

IN THE
SUPREME COURT OF THE UNITED STATES

William Smoak Fairey, Jr, -

PETITIONER

VS.

Secretary, Florida Department of Corrections, et al –

RESPONDENTS

PETITIONER'S REPLY

TO

RESPONDENT'S BRIEFS IN OPPOSITION

William Smoak Fairey, Jr.
5629 Boulder Boulevard
Sarasota, Florida 34233
941-685-7674

REPLY

1. TO THE RESPONSE OF SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS

The original Petition for the Writ of Habeas Corpus was filed in March 2009. The Respondents listed on the Petition were the Secretary, Florida Department of Corrections and the Attorney General of South Carolina.

Since that time, numerous motions, orders, notices and letters have been filed in the case. Without exception, the Respondent has been properly noticed and served with each and every document in the case. A properly formatted and executed Certificate of Service has accompanied each of these documents.

The Respondent has had multiple opportunities to request removal from the case yet has never chosen to take advantage of these opportunities. Continued acceptance of these documents without opposition represents tacit acceptance of the position as holder of immediate custody of the Petitioner.

Further, the Respondent claims that South Carolina has custody of the Petitioner and that Respondent would only act upon the orders of South Carolina. By analogy, when an incarcerated petitioner names the warden in a habeas corpus petition, it is not expected that, upon the order of a court, the warden will personally secure the petitioner/prisoner and personally transport same for appearance before a court. The duty will be delegated to someone with more immediate control of the prisoner.

The Respondent has the same duty in this case. If South Carolina sends an order, subpoena, or any other document for the Petitioner, the Respondent, through his designated representative in the Probation Department, will serve the document upon the Petitioner and assure cooperation and fulfillment of the obligations. This has occurred numerous times in the instant case.

The response of the Respondent is disingenuous, dilatory and should be given no credence.

2. TO THE RESPONSE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA

A. The Respondent chooses to ignore the State's own documentation in asserting that the trial *in absentia* was constitutionally valid.

In March 2003, the Petitioner filed a Motion to Quash. The State's Attorney (Solicitor) and the Trial Court scheduled a hearing for March 24, 2003 in South Carolina. Petitioner appeared at the hearing. The results of that hearing (Order) were mailed to the Petitioner at 5629 Boulder Blvd, Sarasota, Florida 34233 with a postmark of April 1, 2003 and are attached as Appendix A. This document was also attached to the Petitioner's original Petition for the Writ of Habeas Corpus as Exhibit P-10.

The Petitioner fully complied with the Order. This address is the address where the Petitioner was "apprehended" on October 4, 2004, having lived at this address continuously since before the date of the Order.

The State and the Trial Court had received the Petitioner's address information, processed that information and then acknowledged that information

by using that information to properly send the Order to the Petitioner at his correct address.

To later assert that the Notice of Trial was properly sent to the California address and a South Carolina address after having properly sent legal documents to the Petitioner is, in Petitioner's opinion, evidence of prosecutorial misconduct and, perhaps, conspiracy.

B. The Respondent further states, quoting Sec. 2254, that "a determination of a factual issue made by a state court shall be presumed to be correct". However, it is the assertion of the Petitioner that the trial *in absentia* was constitutionally invalid from the beginning of the trial. Any actions taken in the course of the trial were poisoned by the action at the outset.

Nothing, including the "findings of facts" that the Respondent holds so dear, that cascaded from the start of the trial should be construed as constitutionally valid.

C. The Respondent relies upon statements made by the Petitioner after he was brought before the trial judge, with counsel, to assert that Petitioner intended to continue *pro se*. The Respondent is engaging in speculation as to the Petitioner and the speculation has no basis.

This Court has stated time and again " of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have."

It should be noted that Petitioner was not represented, in any fashion, by anyone, at any time, during the constitutionally questionable trial.

WHEREFORE, this Court should grant the Petition for the Writ of Certiorari and take any other action it deems appropriate.

APPENDIX A

EXHIBIT P-10

**STATE OF SOUTH CAROLINA,
COUNTY OF HORRY
IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT**

**STATE OF SOUTH CAROLINA
VS.
DOAK FAIREY
DEFENDANT**

ORDER

2001-GS-26-1707

This matter came before the Court on motion of the defendant, Doak Fairey, requesting that the indictment in this case be quashed. A hearing was held on March 24, 2003. Present for the State was Senior Solicitor Stephen Kodman and the defendant was present serving as his own counsel.

The defendant's motion to quash the indictment is hereby denied for the following reasons:

1. The defendant's right to a preliminary hearing is extinguished by virtue of the fact that the case has already been presented to the Grand Jury.
2. The defendant's reliance on Section 17-1-40 in this case is misplaced. First, that statute applies to the bookkeeping entries and arrest records. Second, in order to accomplish an expungement pursuant to

Section 17-1-40, the defendant is required to apply for an Order of Expungement with the Circuit Court. There is no evidence that an Order of Expungement was ever applied for by the defendant.

3. The remedy for failure to comply with discovery is an issue that is not remedied through the quashing of an indictment.

4. The defendant in this case has been indicted by the Grand Jury. The defendant was properly served notice of such indictment on the record during this proceeding. Since the case was true billed by the Horry County Grand Jury, this Court finds no merit to the defendant's allegations regarding the validity of the Grand Jury proceedings.

For the above referenced reasons, the defendant's motion to quash the indictment in this case is hereby **DENIED.**

Further, this court orders that the previous personal recognizance bond in this case is hereby reinstated. The defendant is required to appear at the call of his case by the State and shall keep the Court and the State advised of any changes in his address.

March 31,2003

/s/John Breeden
The Honorable John Breeden
Presiding Judge
15th Judicial Circuit

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P. O. Box 1276
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SPK

RESORTED
FIRST CLASS



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