

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Case Number: 22554 ER

The State,Respondent

v.

Charles J. Ezell,.....Appellant .

PETITION FOR WRIT OF SUPERSEDEAS

Charels J. Ezell petitions this Court requesting the issuance of a Writ of Supersedeas staying the presentation of his matter to the Beaufort County Grand Jury when this body convenes at 2:00 p.m on January 28, 2009. This Petition follows the denial of a request for an injunction by the Court of General Sessions, the Honorable Carmen T. Mullen presiding. This denial was made on the record on January 28, 2009. A request for reconsideration would be in vain as Judge Mullen requested counsel to leave the court room following her ruling to allow her to qualify the Grand Jury.

As a matter of factual background, Mr. Ezell was arrested on December 26, 2008 and charged with Driving under the Influence, Third Offense. Mr. Ezell submitted a timely, *pro se*, request for preliminary hearing, which was received by the Beaufort Magistrate Court on December 30, 2008. On January 8, 2009, the undersigned counsel was retained and filed a notice of appearance as counsel on behalf of Mr. Ezell with the magistrate court by facsimile transmission. This notice of appearance referenced Mr. Ezell's *pro se* request for a preliminary

hearing and was received at 10:45 a.m. on January 8, 2009.

On January 23, 2009, undersigned counsel submitted a Motion to Schedule a Preliminary Hearing to the magistrate. In response, the magistrate scheduled a hearing for 12:00 p.m. on January 26, 2009. In the summons issued by the magistrate court to the prosecuting police officer, the magistrate court provided that: "All parties were to be present. In the event that Defendant's Motion is granted, the Preliminary Hearing will commence immediately following the Motion Hearing."

At the January 26, 2009 hearing, the prosecuting officer failed to appear; thereby violating the court summons. Further, the magistrate court granted the Motion and ordered that a preliminary hearing be scheduled prior to the presentation of the matter to the Grand Jury at 2:00 p.m. on January 28, 2009. Finally, the court ordered that the scheduling be completed by 5:00 p.m. on January 26, 2009.

The prosecution willfully failed to comply with the court order of January 26, 2009. Instead, the prosecution informed undersigned counsel that the preliminary hearing would not be scheduled, but instead the case would be presented to the Grand Jury. Based upon these actions, the undersigned counsel filed a Motion with the circuit court judge seeking relief.

In the Motion filed on January 27, 2009 at 9:30 a.m., the appellant sought relief in the form of either a dismissal of the proceedings with prejudice or, alternately, an injunction preventing the matter from being presented to the Grand Jury. A hearing was convened at 8:45 a.m. on January 28, 2009. At this hearing, the state conceded that the officer failed to comply with the summons. Further, the state admitted that it failed to schedule the preliminary hearing as ordered by the magistrate.

However, the Court declined to grant either remedy sought by Mr. Ezell. Instead, the

Court found that the officer's failure to comply with the summons did not amount to prosecutorial misconduct warranting relief. Finally, the Court would not issued a finding related to the failure to schedule the preliminary hearing, in violation of the magistrate order, despite repeated requests from undersigned counsel to rule on this issue.

Thus, as it currently stands, supersedeas is necessary to prevent the deprivation of Mr. Ezell's right to a critical stage of the process¹. Without intervention, deprivation will occur through no fault of Mr. Ezell. In fact, without intervention, the state will benefit from two separate instances of defiance of a court order. Finally, no other remedy will offer Mr. Ezell relief, short of supersedeas and this very same error is subject to occurring repeatedly while forever evading review.

Therefore, appellant respectfully requests that a Writ of Supersedeas be issued preventing the State of South Carolina from presenting Mr. Ezell's case to the Beaufort County Grand Jury until either a preliminary hearing is conducted or the matter on appeal is resolved.

Respectfully Submitted,

January 28, 2009

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¹ See Coleman v. Alabama, 399 US 1 (1970).