

TEXAS COURT OF CRIMINAL APPEALS

Ex parte Tenika Brooks

Ex parte Brooks · No. PD-1046-07 · Decided June 9, 2010

SUMMARY

This is a concurring opinion by Judge Meyers of the Texas Court of Criminal Appeals in Ex parte Tenika Brooks. The opinion addresses whether the indictment was facially barred by the statute of limitations and whether a pretrial habeas application was an appropriate vehicle for challenging the indictment, concluding that habeas relief should be granted.

CASE DETAILS

|                       |                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Texas Court of Criminal Appeals                                                                                                                                                                   |
| WRITING FOR THE COURT | Meyers, J.                                                                                                                                                                                        |
| JURISDICTION          | Texas                                                                                                                                                                                             |
| DECIDED               | June 9, 2010                                                                                                                                                                                      |
| DOCKET                | PD-1046-07                                                                                                                                                                                        |
| DISPOSITION           | other                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Appellant sought discretionary review of the Twelfth Court of Appeals' decision concerning the availability of pretrial habeas corpus relief based on the alleged untimeliness of the indictment. |
| PRECEDENTIAL VALUE    | Published concurring opinion; the concurrence's reasoning is not independently binding.                                                                                                           |
| PARTIES               | Tenika Brooks                                                                                                                                                                                     |

TOPICS

- habeas corpus
- criminal procedure
- statutory interpretation
- post-conviction relief
- appellate procedure

PRACTICE AREAS

- criminal procedure
- habeas corpus
- statutory interpretation
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QUESTIONS PRESENTED

1. Whether the court of appeals misconstrued Brooks's challenge to the timeliness of the indictment as a challenge to an unpleaded tolling provision.

2. Whether an indictment is facially barred and subject to pretrial habeas corpus relief when the applicable limitations period has expired and the indictment does not plead a tolling circumstance based on a prior pending indictment.
3. Whether a subsequent indictment tolls the statute of limitations only when it alleges the same conduct, act, or transaction as the earlier indictment.

#### **HOLDINGS**

1. A pending-indictment tolling provision applies only when the subsequent indictment alleges the same conduct, same act, or same transaction.
2. If the State relies on the pendency of another indictment to toll the statute of limitations, it must plead that tolling basis in the indictment.
3. A facially invalid indictment that, if legally defective, would bar prosecution or conviction is a proper subject of a pretrial writ of habeas corpus.

#### **KEY QUOTATIONS**

*“The problem with this reasoning is that it places Appellant's indictment in the wrong category; Appellant's indictment is facially barred, and is therefore a proper subject for a writ of habeas corpus.”*

*“Based on Appellant's indictment, it is clear that she was charged with an offense for which the statute of limitations had run. Therefore, I would conclude that Appellant is entitled to habeas corpus relief.”*

#### **FACTUAL BACKGROUND**

Brooks was charged with theft or aggregate theft arising from conduct occurring on or about April 1, 2000. The applicable five-year limitations period therefore expired on April 1, 2005, absent a valid tolling circumstance. The indictment did not include a tolling paragraph alleging that another indictment covering the same conduct, act, or transaction was pending.

#### **PROCEDURAL HISTORY**

The Twelfth Court of Appeals characterized Brooks's complaint as a challenge to an unpleaded tolling provision and held that the alleged defect was not a proper subject of a pretrial habeas application. The Texas Court of Criminal Appeals granted discretionary review. In this concurring opinion, Judge Meyers agreed that the court of appeals misconstrued the argument and stated that Brooks was entitled to habeas corpus relief; the supplied text does not state the majority's disposition.

#### **DISPOSITION**

other

#### **REMAND INSTRUCTIONS**

The concurrence stated that its analysis was intended to be instructive to the court of appeals upon remand and would grant Brooks habeas corpus relief. The supplied text does not provide the majority's operative remand instructions.

#### CASES CITED

- Hernandez v. State, 127 S.W.3d 768 (Tex. Crim. App. 2004)
- Ex parte Smith, 178 S.W.3d 797 (Tex. Crim. App. 2005)
- Ex parte Brooks, No. 12-06-00378-CR, 2007 Tex. App. LEXIS 4770, at \*5 (Tex. App.—Tyler June 20, 2007, pet. granted)
- Tita v. State, 267 S.W.3d 33, 37-38 (Tex. Crim. App. 2008)

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