

The Honorable A. Tanya Gee
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

April 23, 2013

RE: Ronald Tate, #114188 v. S.C. Department of
Probation, Parole and Pardon Services, Respondent,
Case No. 2013-000526

Dear Ms. Gee:

Enclosed for filing is an Affidavit of Ronald Tate, attached with a
copy of the Inmate Trust Fund Account Report for South Carolina Court
Filing Fees and Proof of Service.

Thank you for your invaluable time and service in the above.

Sincerely,

Ronald Tate

Ronald Tate, #114188
Appellant Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669

Jana Shealy
Admin. Law Clerk
1205 Pendleton St.
Columbia, S.C. 29201

Other Counsel of Record:
Tommy Evans, Jr.
Legal Counsel
SCDPPPS P.O. Box 50666
2221 Devine St.
Columbia, S.C. 29250

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Appellant Case No. 2013-000526

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APR 26 2013

SC Court of Appeals

Ronald Tate, #114188

Appellant,

v.

S.C. Department of Probation,
Parole and Pardon Services.

Respondent.

AFFIDAVIT OF RONALD TATE

I, Ronald Tate, #114188, being duly sworn deposes as follows:

This Affidavit is submitted by Appellant Ronald Tate, #114188, to inform the Court that he filed a Notice of Appeal on February 28, 2011 on Procedural, Statutory and Constitutional violations of South Carolina Law by the Parole, Probation and Pardons Board. Carolyn C. Matthews, Administrative Law Judge, was assigned to the case on March 28, 2011.

On February 12, 2013, the Honorable Matthews, issued an order affirming the decision of Respondent. Upon receiving the order Appellant filed a Notice of Appeal with the S.C. Court of Appeal's and request to proceed without prepayment of fees pursuant to S.C. Constitution Art. I, § 22.

Appellant has a right to judicial review. The right was well established for S.C. prisoner's in Al-Shabazz, supra at 754. This Court's jurisdiction to hear this appeal from the Administrative Law Judge (ALJ) arises from and is controlled by statutory law, as amended by the 2006 Act 387, § 5, to S.C. Code § 1-23-380, effective July 1, 2006.

Affiant declare that he is unable to pay costs of these proceedings and that he is entitled to relief sought in this appeal. Appellant moves the Court to take judicial notice that to interpose any financial consideration between an indigent prisoner of the State and his exercise of a State right to [Appeal] ... is to deny that prisoner the equal protections of the law. Smith v. Bennett, 81 S.Ct. 895 (1961). When right is granted by the State, financial hurdles must not be permitted to condition its exercise. Id. 898.

In support of his application, Appellant is currently incarcerated at Perry Correctional Institution in Pelzer, S.C. 29669, as an unemployed indigent inmate and receives no payment of any kind. And, currently has no source of income from family or other to satisfy any

requested fee. Constitutional provision's only require the granting of a motion to proceed in forma pauperis when a fundamental right is involved. Martin, supra; compare, Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780 (1971).

In the case at bar, the order and actions of the ALJ's findings are made upon unlawful procedure, affected by error of law, clearly arbitrary and characterized by unwarranted exercise of discretion. Judge Matthews erred in determining the effect of the may/shall provision without evidence of how the parole board has actually exercised its discretion. See Garner, 529 U.S. at 250, 120 S.Ct. 1362. Judge Matthews denied Appellant discovery and an opportunity to access data pertaining to the effect of the retroactive application of the parole laws on his own prison term, his claims will never rise above speculation-and will ultimately fail. The Courts of Appeals are entitled to cure insufficient records by ordering discovery. Garner, 529 U.S. at 257.

Appellant correctly asserted a retroactive change in the law governing parole that might violate the Ex Post Facto Clause. See Garner at 529 U.S. 244, 250. This is a case in which Due Process Clause is implicated because Appellant has reasonably relied on agency regulations promulgated for his guidance or benefit, and has suffered substantially because of the violation(s) by SCDPPPS and ALC. This Court must review the infringements complained of by Appellant which reach constitutional dimensions.

Sworn To And Subscribed Before Me

This 25th, Day Of March, 2013.

Patricia Buchanan
Notary Public For South Carolina

My Commission Expires: 4-24-2020

Ronald Tate
Signature of Affiant

INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES

Ferry

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Ronald Tate

SCDC# 114188

INMATE SIGNATURE: *Ronald Tate*

I plan to file this action in the SC County of S.C. Court of Appeals

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 50.06
- (2) Twenty percent (20%) of line 1 \$ 10.01
- (3) Account balance - current date \$ 15.16
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ 0

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21737
Columbia, SC 29221-1737

*Admission date is noted here if inmate incarcerated less than six months / /

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PROOF OF SERVICE

I, Ronald Tate, certify that I have served an Affidavit of Ronald Tate, attached with a copy of Inmate Trust Fund Account Report for South Carolina Court Filing Fees on Carolyn C. Matthews, Administrative Law Judge, by depositing a copy of it in the United States Mail, postage prepaid, addressed to her Clerk, Jana Shealy, Administrative Law Court, 1205 Pendleton St., Suite 224, Columbia, S.C. 29201.

I further certify that I have mailed identical copies of same to Tommy Evans, Jr. Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services at 2221 Devine St., Suite 600, P.O. Box 50666, Columbia, S.C. 29250.

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P.C.I. MAILROOM

Ronald Tate

Ronald Tate, #114188

Appellant

Perry Correctional

Institution Q-2

430 Oaklawn Road

Pelzer, S.C. 29669

This 23, day of April 2013.

at Pelzer, South Carolina.