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STATE OF SOUTH CAROLINA
Court of Appeals

JAN 12 2023

SC Court of Appeals

Appeal from ADMINISTRATIVE LAW COURT
and SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Judge ~~Walter Stewart~~ 10/1/10 Lewis

App. Case No. 2022-001640

Robert Wazney, Appellant

v.

S.C. Dept. of Corr., Respondent.

MOTION TO REINSTATE

Affidavit or Declaration

COMES NOW, ROBERT WAZNEY, APPELLANT, who after being duly sworn deposes and states:

I am Robert Wazney, Appellant, in this case 2022-001640, and Appellant is in receipt of Court of Appeals paper dated December 29, 2022, which Appellant received January 5, 2023. The Paper acknowledges receipt of my PETITION FOR REHEARING filed December 28, 2022. This courts Paper also reads "the court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal, [and] [a]ccording, the motion will not be acted on and [Appellant's] document is being returned ... [and] [t]he filing fee must be paid within fifteen (15) days or the appeal will be dismissed.

HOWEVER, Appellants legal theory in his PETITION FOR REHEARING, which indicates (i) there is a constitutional exception to the requirement of a filing fee, and (ii) the ORDER from which the PETITION FOR REHEARING is appealing has the effect of dismissing or finally deciding Appellant's appeal is a direct contradiction to Clerks legal theory as to why the motion is being returned.

Therefore, the PETITION FOR REHEARING should be entertained by the Court and it should not have been returned to Appellant by the Clerk. Attached herewith is the original copy of the PETITION FOR REHEARIN the Clerk mistakenly returned to Appellant.

PREMISES CONSIDERED, with good cause shown, Appellant requests PETITION FOR REHEARING be entertained, and any other relief as this Court may provide in favor of the Appellant.

CERTIFICATE OF SERVICE

I certify that true and correct copies of this MOTION TO REINSTATE were served on all parties to this action, addressed to S.C. Court of Appeals, PO Box 11629, Columbia, SC 29211, and J.R. Shakibanasab, S.C. Dept. of Corr., 4444 Broad River Road, Columbia, SC 29211, by placing the same in the U.S. Mail postage prepaid on this day:

I declare under penalty of perjury that the foregoing is true and correct.

January 7, 2023.

Robert Wazney
610 Hwy. 9 West
Bennettsville, SC 29512
Appellant, Pro-se, Case # 22-001640

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
In the Court of Appeals

DEC 28 2022

SC Court of Appeals

Appeal from ADMINISTRATIVE LAW COURT
and SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Judge S. P. Lenski

Appellate Case No.: 2022-001640

Robert Wazney, Appellant,

v.

S.C. Dept. of Corr., Respondent.

~~PETITION FOR REHEARING~~

This ~~PETITION FOR REHEARING~~ comes pursuant Rule 221 S.C. Appellate Court Rules (SCACR) by the above named Appellant, and is in accordance with Rule 240 SCACR as required by this courts 6/30/2022 correspondence. This ~~PETITION FOR REHEARING~~ comes concerning this Courts ORDER dated December 14, 2022 which Appellant received on December 19, 2022.

December 21, 2022.

Robert Wazney
610 Hwy. 9 West
Bennettsville, SC 29512
Appellant, Captive, Pro se

Other Counsel:

Joseph R. Shakibanasab
S.C. Dept. of Corr.
4444 Broad River Road
Columbia, SC 29221
(803) 896-1278

Affidavit or Declaration

COMES NOW, Robert Wazney, Appellant, who after being duly sworn deposes and states:

I am Robert Wazney, Appellant, and this is PETITION FOR REHEARING for this case 2022-001640. Appellant is in receipt of S.C. Court of Appeals ORDER filed December 14, 2022, which Appellant received on December 19, 2022. The courts ORDER states that "the motion to proceed in forma pauperis is denied pursuant to Ex parte Martin, 321 SC 533, 471 SE3d 134."

HOWEVER, Appellant's complaint fits within a constitutional exception to the requirement of a filing fee, as set out in Ex parte Martin, in where a fundamental interest is at stake.

Case in point, Appellant has a fundamental constitutional right to his property, U.S.CONST.Amend. 5, SC CONST. Art I § Section 13 ([P]rivate property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property). Appellant has a right to personal security against unlawful invasion. Coffin v. Reichard 143 F.2d 443. Appellant has been assailed in his property and therefrom he may defend. Boddie v. Connecticut, 401 US 371, 91 S.Ct. 780, 28 L.Ed.2d 113; U.S.CONST.Amend. 14, see, also, Windsor v. McVeigh, 93 US 274, 277, 23 L.Ed. 914 (1876), Baldwin v. Hale, 1 Wall. 223, 17 L.Ed. 531 (1864); Hovey v. Elliott, 167 US 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897). Hence, a fundamental interest is at stake. **When fundamental interests are at stake, the litigants inability to pay a fee cannot be a barrier to his access to the judiciary.** Parker v. Jackson, 942 F.3d 1252, U.S.CONST.Amend. 1.

Additionally, Appellant is denied a required opportunity for a hearing before being deprived of any property interest. Boddie, 401 U.S. 380, 91 S.Ct. 786; U.S. CONST.Amend. 14.

The foregoing establishes a constitutional exception to the requirement of a filing fee set out in Ex parte Martin, 321 SC 533, 471 SE3d 134 (1995), see, also, Lakes v. State, 510 SE2d 228, 230 (Unless a statutory provision allows waiver of filing fees, motions to proceed in forma pauperis may only be granted where specifically authorized or required by law. Ex parte Martin).

The ORDER denying Appellant's request to proceed in forma pauperis effectively discontinues the action because it is Appellant's only means of bringing the action. An appellate court has jurisdiction to review an order affecting a substantial right when the order has the effect of discontinuing the action or preventing an appealable judgment. S.C.Code Ann. § 14-3-330(2)(a)(Supp. 1997).

CONCLUSION

THEREFORE, in forma pauperis should be granted as authorized or required by law.

PRAYER

PREMISES CONSIDERED, Appellant requests for the Court to reverse the ORDER filed December 14, 2022 and GRANT in forma pauperis, and any other relief as this Court deems fit or appropriate.

I, Robert Wazney, Appellant, declare under penalty of perjury that the foregoing is true and correct.

December 21, 2022.

~~Robert Wazney~~

~~610 Hwy. 9 West~~

~~Bennettsville, SC 29512~~

~~Appellant, Captive, Pro se~~

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from ADMINISTRATIVE LAW COURT
and SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Judge S. P. Lenski

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Robert Wazney, Appellant,

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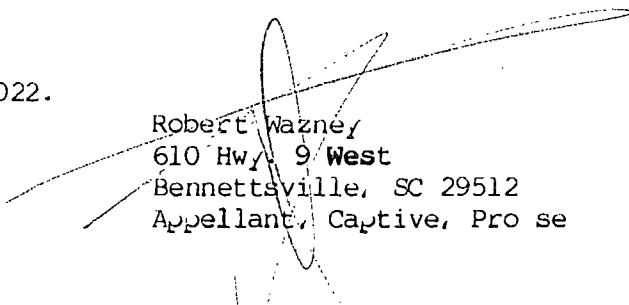
PROOF OF SERVICE

I, Appellant, hereby certify that a copy of the foregoing PETITION FOR REHEARING was, this date, served upon all parties to this action addressed to S.C. Court of Appeals, PO Box 11629, Columbia, SC 29211, and J.R. Shakibanasab, S.C. Dept. of Corr., 4444 Broad River Road, Columbia, SC 29211, by placing copy of the same in the U.S. Mail postage prepaid:

I declare under penalty of perjury that the foregoing is true and correct.

December 21, 2022.

December 21, 2022.


Robert Wazney
610 Hwy. 9 West
Bennettsville, SC 29512
Appellant, Captive, Pro se

ROBERT WILLIAM WAZNEY
c/o Evans Correctional Institution
F5A0156 363679
610 Highway 9 West
Bennettsville, South Carolina 29512

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10 JAN 2023 PM 2 1



S.C. Court of Appeals
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Columbia, SC 29211

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