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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

In The Supreme Court

—
Appeal from ADMINISTRATIVE LAW COURT and
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Judge Philip Lenski

—
App. Case No.: 2022-001640
(SC Ct. App. filed 2/15/23)

—
South Carolina Department of Corrections, Respondent.

v.

Robert Wazney, Appellant.

—
PETITION FOR WRIT OF CERTIORARI
—

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

Other Counsel of Record:
J.R. Shakibanasab
Attorney for Respondent
4444 Broad River Road
Columbia, SC 29211

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Boddie v. Connecticut, 401 US 371, 91 S.Ct. 780, 28 L.Ed.2d 113	
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CERTIFICATE OF COUNSEL

Pro se appellant certifies that the petition for rehearing was made and finally ruled upon by the Court of Appeals and appellant received notice of it's final order on March 7, 2023.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in dismissing Appellant's Application to Proceed In Forma Pauperis ?

STATEMENT OF THE CASE

Affidavit or Declaraton

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

I, Robert Wazney, am an indigent captive of the State of South Carolina, I am the appellant in this action. Appellant brought this action to S.C. Court of Appeals on 11/6/22 to remedy a decision made subsequent a DHO hearing held in front of South Carolina Department of Corrections (SCDC), Respondent, in where Appellant purchased goods from Respondent's Canteen, thereafter the goods were taken by the Respondent, and the Respondent then charged and convicted Appellant of Smuggling and Possession of a weapon for owning the goods. Appellant thereafter appealed to the Adminstrative Law Court (ALC), ALC dismissed the action, Appellant appealed it's decision and applied for in forma paupers in the S.C. Court of Appeals. Court of Appeals, failing to recognize that Appellant is denied a required opportunity for a hearing before being deprived of any property interest and that there is a constitutional exception to the requirement of a filing fee, dismissed the action because Appellant failed to submit the notice of appeal filing fee. The Appellant seeks a writ of certiorari to review that decision.

ARGUMENT

Court of Appeals denied Appellant in forma pauperis (APPX. A). THE COURT OF APPEALS SHOULD HAVE HELD THAT APPELLANT IS GRANTED IN FORMA PAUPERIS because Appellant's complaint fits within a constitutional exception to the requirement of a filing fee, as set out in Ex parte Martin, 321 SC 533, 471 SE3d 134, in where a fundamental interest is at stake because Appellant has a fundamental constitutional right to his property, U.S.CONST.Amend. 5, SC CONST. Art. I Sect. 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), and where Appellant has a right to personal security against unlawful invasion, Coffin v. Reichard, 143 F.2d 443., and 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), and since fundamental interests are at stake, the Appellant's 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, and, Appellant is being 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, this constitutional exception to the requirement fee, as set out in Ex parte Martin 321 SC 533, 471 SE3d 134 (1995), is also in Lakes v. State, 510 SE2d 228, 230 (Unless a statutory provision allows waiver of filing fees, motion to proceed in forma pauperis may only granted where specifically authorized or required by law. Ex parte Martin.), and ORDER denying request to proceed in forma pauperis effectively discontinued the action because it is Appellant's only means of bringing the action, see PETITION FOR REHEARING (APPX. B) which was overruled (APPX. C), and Appellant's MOTION TO REINSTATE (APPX. D) was also overruled (APPX. E), and PETITION FOR REHEARING AND MOTION TO REINSTATE (APPX. F) was ignored (APPX. G), and the Court of Appeals 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. SC.Code Ann. Sect 14-3-330(2)(a)(Supp. 1997).

CONCLUSION

For the reasons stated, the Appellant asks the Court to grant the petition for writ of certiorari.

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

Respectfully submitted,

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PETITION FOR WRIT OF CERTIORARI was, this date, served upon all parties to this action address to S.C. Supreme Court, PO Box 11330, Columbia, SC 29211, and J.R. Shakibanasab, S.C. Dept. of Corr., 4444 Broad River Road, Columbia, SC 29211, by placing a copy of the same in the U.S. Mail postage prepaid:

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

March 16, 2023.

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