

The South Carolina Court of Appeals

Robert William Wazney, #363679, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2022-001640

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.



FOR THE COURT

Columbia, South Carolina

cc:
Robert William Wazney, 00363679
Joseph R Shakibanasab, Esquire

FILED
Dec 14 2022

2.
STATE OF SOUTH CAROLINA
In the 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

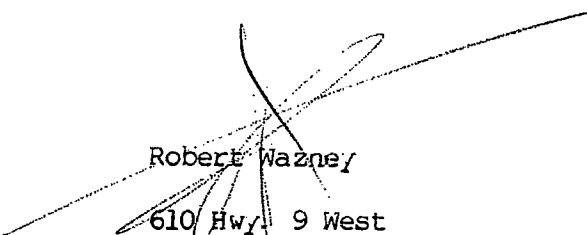
THEREFORE, in forma pauperis should be granted as authorized or required by law.

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

Appellate Case No.: 2022-001640

Robert Wazney, Appellant,

v.

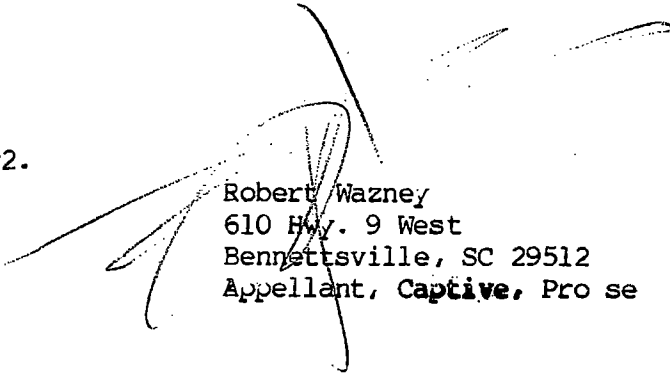
S.C. Dept. of Corr., Respondent.

PROOF OF SERVICE

I, Appellant, hereby certify that a copy of the foregoing PETITION FOR REHEARING was, this date, served upon all partis 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.



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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 29, 2022

Robert William Wazney, 00363679
Evans Correctional Institution
610 Highway #9, West
Bennettsville SC 29512

Re: Robert Wazney, #363679 v. SCDC (9)
Appellate Case No. 2022-001640

Dear Mr. Wazney:

The Court has received your petition for rehearing filed December 28, 2022. Pursuant to Rule 240 (i) of the South Carolina Appellate Court Rules (SCACR), 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. According, the motion will not be acted on and your document is being returned to you. The filing fee must be paid within fifteen (15) days or the appeal will be dismissed.

Very truly yours,

Handwritten signature of V. Claire Allen in cursive script.

CLERK

cc: Joseph R. Shakibanasab, Esquire

APPENDIX C

STATE OF SOUTH CAROLINA
Court of Appeals

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

Judge ^{10/2/23} ~~Robert Wazney~~ ^{Cewski}

—
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 REHEARING 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, Captive



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
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www.sccourts.org

January 12, 2023

Robert William Wazney, 00363679
Evans Correctional Institution
610 Highway #9, West
Bennettsville SC 29512

Re: Robert Wazney, #363679 v. SCDC (9)
Appellate Case No. 2022-001640

Dear Mr. Wazney:

The Court is in receipt of your motion to reinstate/ petition for rehearing. Pursuant to Rules 221(c) and 240(i), SCACR, and the Court's letter dated December 29, 2022, "the appellate 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." No further petitions for rehearing will be accepted as it relates to the Court's order denying the motion to proceed in forma pauperis. The notice of appeal filing fee is due within 15 days from the date of this letter or your appeal will be dismissed.

Very truly yours,


CLERK

cc: Joseph R Shakibanasab, Esquire

APPENDIX E

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The South Carolina Court of Appeals

Robert William Wazney, #363679, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2022-001640

ORDER

Appellant has failed to submit the notice of appeal filing fee, as required by Rule 203, SCACR, and this court's letters of December 29, 2022, and January 12, 2023, which advised Appellant this appeal would be dismissed if the filing fee was not paid within 15 days. Accordingly, this matter is dismissed. The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Robert William Wazney, 00363679
Joseph R Shakibanasab, Esquire

FILED
Feb 15 2023

APPENDIX G



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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March 6, 2023

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia SC 29201

REMITTITUR

Re: Robert Wazney, #363679 v. SCDC (9)
Lower Court Case No. 2022ALJ040200AP
Appellate Case No. 2022-001640

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "V. Claire Allen".

CLERK

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Enclosure

cc: Robert William Wazney, 00363679
Joseph R Shakibanasab, Esquire
The Honorable S. Phillip Lenski