

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ADMINISTRATIVE LAW COURT
John McLeod, Administrative Law Judge

Docket No. 12-ALT-04-0153-AP

Appellate Case No. 2012-213209

Appellate Case No. 2013-001045

Isiah James, Jr.,

Petitioner,

v.

South Carolina Department of
Corrections (SCDC),

Respondent.

PETITION FOR WRIT OF HABEAS
TO SOUTH CAROLINA COURT OF APPEALS

Isiah James, Jr., 96883
RCI, CA-52, PDB 2039
Ridgeland, SC

RECEIVED

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JUN 21 2013

S.C. SUPREME COURT

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CERTIFICATE OF PETITIONERS

Petitioner Isiah James, Jr., hereby certifies that a notice and motion for reinstatement and rehearing on pauper status application under South Carolina Appellate Court Rules (SCACR) 260(a) and 240(i) §(i) was made and finally ruled on by the Court of Appeals on 17 April 2013.

QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred when the motion for rehearing was denied which sought reconsideration of in forma pauperis application?
- II. Did the Court of General Sessions for Sumter County have subject matter jurisdiction with reference to the 18 June 1979 term?

STATEMENT OF THE CASE

James was transferred administratively from Dutchman Correctional Institution [DCI] to Kirkland Correctional Institution [KCI] on or about 7-18-85 after he received the Fall 1984 decision in *James v. Leeke et al.*, 749 F.2d 31 (CA4 1984). He was again transferred administratively on or about 12-19-97 from Goodman Correctional Institution [CCI] to Ridgeland Correctional Institution [RCI] where he is currently confined. He filed an application for post-conviction relief (PCR) initially about what resulted from the institutional transfer (to RCI) in the Court of Common Pleas for Sumter County

It was dismissed without a hearing when he appealed the APCR decision to South Carolina Supreme Court; the Court issued Memorandum Opinion No. 2000-MO-082 (filed 6-6-02k) (App. p. 7). He filed 6-2-11 grievance step 1 which was denied on or about 8-20-11; petitioner filed a timely step 2 (grievance appeal) which was granted in part (on other grounds) on or about 2-15-12. (App. p. 10) James filed a timely notice of appeal to the Administrative Law Court [ALC]. The ALC issued 9-6-12 order of dismissal (App. p. 11); he appealed to South Carolina Court of Appeals where he sought in forma pauperis status.

He was granted prisoner pro se status which was part of the motion; the Court of Appeals denied pauper status on 11-20-12. When petitioner could not pay the filing fee, the clerk's office issued 12-18-12 order of dismissal as James "failed to provide the \$100 notice of appeal filing fee" (App. p. 15). He filed what was a motion for reinstatement and reconsideration of pauper status timely. The Court of Appeals issued the 4-17-13 order; it denied the "rehearing" request (App. p. 19). He comes to this Court for appeal and relief.

ARGUMENT(S)

1. THE COURT OF APPEALS ERRED DENYING JAMES'S MOTION FOR REINSTATEMENT AND RECONSIDERATION OF PAUPER STATUS

The Court of Appeals erred denying James's motion for rein-

in ~~statement~~ and reconsideration of pauper status, petitioner asserts that he has a due process and equal protection, statutory and court rule(s) right(s) to proceed in forma pauperis. Lakes v. State, 510 S.E.2d 228, 230 (S. Ct. App 1998) ("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") Surely, this was the circumstance(s) when James appealed the APCR in 1999 which was remanded under Al-Shabazz. (APR p. 8).

The current appeal from the ALC was a subsequent proceeding from Memorandum Opinion No. 2009-MO-082 wherein the ALC granted James pauper status to so proceed. There was the enactment of Act No. 2006 Act No. 387, § 4, eff. July 1, 2006 ("Act 387") of South Carolina General Assembly which changed the appellate jurisdiction for appeal(s) from ALC to circuit court(s) to South Carolina Court of Appeals. See S(CA)CR 201, 202, 203, 204, 205, 207, 208, 210, 212, 214, 220, 231 [now 268] ["Emergency Amendment"] South Carolina Court of Appeals review of in forma pauperis status should be examined on the criteria whether James is entitled to judicial review. Howard v. SCDC, 133 S.E.2d 211, 216, 227 (2012)

James raised claims which pertained to fundamental right(s) where due process (vindictiveness) was press against him for exercising his right(s) to litigate and access to court(s) and where he is being subjected to unconstitutional ex post facto laws (policies) which caused his max-out date to be extended far into the future. Specifically, the 2-15-12 step II indicated, "Per 02-21.07

Earned Work Credits, section 2.1 (Each inmate who was allowed to keep his/her earned work credit rate . . . will continue to earn EWCS at that rate" ; it states policy (law) is after-the-fact. (App. p. 10)

The 9-6-12 order of dismissal of AAC notes that petitioner raised "a violation of his due process rights" (App p. 16) even if the court applied the wrong factual and legal aspects.

2. THE COURT OF GENERAL SESSIONS FOR SUMTER COUNTY DID NOT HAVE SUBJECT MATTER JURISDICTION WITH REFERENCE TO 18 JUNE 1979 TERM.

The Court of General Sessions for Sumter County did not have subject-matter jurisdiction with reference to the 18 June 1979 term. Section 14-5-640 (3) of South Carolina Code Ann. (1978) and *State v. Langford*, 735 S.E.2d 471, 477 (2012). *Langford* points to section 1-7-330 of S. C. Code Ann. (1979); it commanded, "the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term."

Petitioner relates that he was indicted at the March 1979 term of the Court of General Sessions for Sumter County (App. p. 2) There was a pretrial hearing on 1 June 1979 where various (many) motion(s) were entertained (App. p. 3) when this court ruled on the 1999 appeal of the APCR; the court chose to emphasize "Dan F. Laney, Jr., Trial Judge" (App. p. 7). South Carolina Code of Laws (1978), section 14-5-640 (3) relates:

The court of general sessions for Sumter

County shall be held at Sumter on the second Monday in February for two weeks, on the second Monday in May for two weeks, on the fourth Monday in July for two weeks.

James was not given a week notice prior to 6-18-79 that his case would be called for trial, nor has he been able to acquire any information that 6-18-79 was a lawfully authorized term of court. (App. p. 9).

When the Court considered the 2000 APCR, the Court wrote, "The petitioner for writ of certiorari is denied on Petitioner's Question II" (App. p. 8) which was a jurisdictional issue or question of the trial court. He requests that Court exercises its authority of judicial notice on this question as he had an arraignment on or about 3-26-79 in the trial court which denoted a term of court.

CONCLUSION

Wherefore, petitioner requests that this Court grants the petition herein. This 13 day of May 2013

s/ Loxah James, Jr