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STATE OF SOUTH CAROLINA

Court of Appeal

SC Court of Appeals

Appeal from Administrative Law Court
Judge M.G. Kimpson

ALC Case No. 2023ALJ040097AP

Ct. App. Case: 2023-000776

Robert Wazney, Appellant,

v.

Director of South Carolina Department of Corrections, Respondent.

PETITION FOR REHEARING

Robert Wazney

610 Hwy. 9 West

Bennettsville, SC 295112

803-896-4958

Appellant, pro se, captive, victim

PETITION FOR REHEARING

The Appellant, Robert Wazney, pro se, victim, pursuant to Rule 221 of the South Carolina Appellate Court Rules (SCACR), moves the court to reconsider it's August 15, 2023 opinion. In support of the motion, the Appellant shows the following to the court:

Affidavit or Declaration

~~COMES NOW, Robert Wazney, Appellant, pro se, victim, with his PETITION FOR REHEARING, who after being duly sworn deposes and states:~~

~~"I am Robert Wazney, pro se, victim, I received ORDER dated August 15, 2023 from this Court on August 18, 2023. The Order dismisses my appeal due to failure to provide notice of appeal filing fee.~~

~~My private property was stolen. I reported the stolen private property to South Carolina Department of Corrections police through the KIOSK, however, after I reported the incident to the Police, the Police did nothing, so I filed a paper-grievance but I could not access the KIOSK because KIOSK was broke for many months and I had to send the paper-grievance without a required KIOSK reference number, and which was explained on the paper-grievance. The Police rejected my paper-grievance because paper-grievance did not have a KIOSK reference number on it. The Police are not giving me a way to remedy my stolen property, so I filed an appeal with Administrative Law Court (ALC) concerning violation of Due Process. The ALC said I did not claim Due Process even though it clearly reads "Due Process" on the face of the Appeal. So I filed Appeal with S.C. Court of Appeals (SCCOA), but the SCCOA has dismissed my in forma pauperis request because "the right to proceed in forma pauperis must rest upon a statute or fundamental constitutional right", and SCCOA is dismissing my case because I did not provide SCCOA court fees.~~

~~I have a fundamental constitutional right to my property, that right was violated when my private property was stolen. I told SCCOA that "[m]y fundamental rights have been violated, [and] I can not afford to pay [SCCOA] court[] costs and fees." But SCCOA has decided to dismiss my appeal anyways. This is error and prejudice to me.~~

~~This court overlooked the material fact that my private property was stolen. This Court has overlooked decisions which are controlling as authority, and this court misapplied provision of law and controlling authority in the following respects:~~

a. My private property was stolen.

b. My property interests are protected by the United States Constitution Amendment 14 Due Process Clause: "... nor shall any State deprive any person of life, liberty, or property without due process of law"; U.S. Const. Amend. XIV § 1.

c. This case, rooted in my federally protected property rights of the Due Process Clause, concerns my fundamental constitutional interest.

d. When fundamental interests are at stake, my inability to pay the filing fee cannot be a barrier to my access to the judiciary. Miller v. Donald, 541 F.3d 1091 (11th Cir. 2008). Roddie v. Connecticut, 401 US 371, 374, 91 S.Ct. 780, 784, 28 L.Ed.2d 113 (1971).

e. "[W]here certain fundamental rights are involved the Constitution requires that an indigent be allowed access to the courts." Ex parte Martin, 321 SC 533, (citations omitted) see also n.1.

The material fact(s) and decisions overlooked requires a different decision from that rendered by the Court of appeals. The decisions that should have been rendered is for Robert Wazney.

SCCOA denied my request of in forma pauperis (IFP) because it believes there is no fundamental right involved, my stolen private property is a fundamental right, the denial of IFP is why my appeal is dismissed. I cannot afford the court costs and fees and the SCCOA is in error where it believes there is no fundamental right involved, and this error is the cause of the dismissal of my appeal. Pursuant to Ex parte Martin, supra, I have a right to IFP, SCCOA is relying on Martin to uphold the denial of IFP, however, Martin is the case in which if the Court had not overlooked the fact that my fundamental constitutional rights are at stake, and which this case rests on fundamental rights, SCCOA would not have dismissed my appeal. All of this information is in the record.

WHEREFORE, THE Appellant requests the court to reconsider its August 15, 2023 opinion and rule in favor of the Appellant.

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CERTIFICATE OF SERVICE

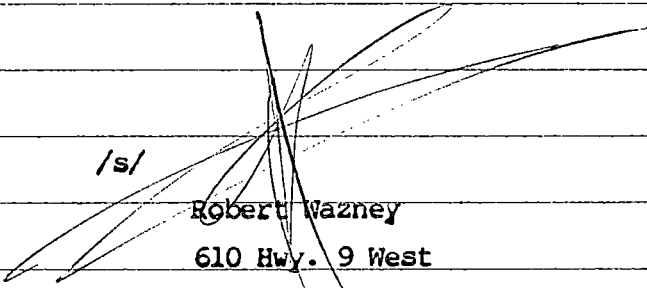
The undersigned hereby certifies that on this day true and correct copies of this PETITION FOR REHEARING were served on all parties to this action by placing copy of the same in the U.S. Mail postage prepaid addressed to the following addresses:

Office of General Counsel
PO Box 21787
Columbia, SC 29221-1787

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

August 21, 2023.

/s/


Robert Wazney
610 Hwy. 9 West
Bennettsville, SC 29512
803-896-4958
Appellant, pro se, captive, victim

ROBERT WILLIAM WAZNEY
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