

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Crystal M. Rookard, Administrative Law Judge

Case Number: 21-ALJ-04-0181-IJ

South Carolina Department Of Corrections,

-versus-

Bennie Wicker, Jr., #122304

Appellant.

RECEIVED
SEP 15 2023
SC Court of Appeals
Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

[I], Bennie Wicker, Jr., #122304, Appellant, in the above captioned case before this Honorable SC Court Of Appeals request under rare and unusual circumstances to be allowed to proceed without ,immediatly, paying the filing fees and court cost.,

I have requested that Prison officials cut a check for \$100.00¢ from my EH Prison Cooper Trust Fund, which will be made out to The Clerk Of Court for the SC Court Of Appeals, please see attachment verifying I have requested check from prison officials, which will take about two weeks to get back here to the prison and then I will send it directly to this Court to pay the \$100.00¢ filing fee and if the filing fee and court cost are any more I should be able to pay them within the next 45 days because I am awaiting a check from prison officials for \$25,262.65¢ (see a copy of letter from SCDC General Counsel promising me and the Administrative Law Judge that I will be getting the check shortly).....

The rare and unusual circumstances of this case and request is that, It took me 15 days to get the Order from Administrative Law Judge, Which Im appealing to this Court, w which is crazy and suspect, I don't know if prison officials are holding my mail or if there is a problem with post office and then when I send legal mail out, it sometimes takes 10 days just to get to Columbia, so Im afraid if I try to wait and file this Notice Of Appeal when the check gets back to me, my time to file my Notice Of Appeal may have elapsed? And my concerns are real, because this is why this appeal is before this court because the Administrative Judge did not get my Objections to the Motion To Dismiss in time eventhough I had mailed them, so in her Order she said I did not file a response, which was not true and I have the proofs, certified mail...

AS this court can see from the letter of prison officials having to pay me over \$25,000,00¢ and a review of several other published opinions I have (Wicker v. SCDC, 602 SE 2d. 56 (2004)), that I am a seasoned litigator and I cannot prove prison official

is interfering with my mail or whether its something going on at post office, but I am just proceeding on the safe side, because I don't want to lose out on my right to appeal the Administrative Law Judge's decision, which I know with 100% certainty I will win on appeal because the US Fourth Circuit Court OF Appeals Judge said in Booker v. SCDC, 855 F. 3d. 533 / 2017 WL 1513576 that "Inmates have a CLEARLY established RIGHT to be free from Retaliation for filing grievances". The ALJ in this case asys I and inmates don't, so that's why I know I will win if you allow me to file this appeal, period.

*** I know this Motion To proceed in forma pauperis is rare and unusual, but I know and believe that if you don't allow me to proceed with filing my Notice Of Appeal, the check will likely be mysteriously held up and arrive to me at the last minute and by the time it gets to you my 30 day filing of Notice Of Appeal will have elapsed and I will be denied my right to appeal...

I have attached a sworn affidavit to support my concerns and my ability to timely pay the filing fee and any related court cost.

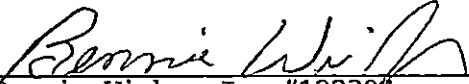
C O N C L U S I O N

I pray this Honorable Court grant my instant Motion To Proceed without paying the filing fee and any related court cost, but issuing a Order that I pay the filing fee within the next 45 days, which I will comply with, please?
If the filing fee is more than \$100.00¢, let me know, because that's what I saw in the 2012 court rules, but I have no problem complying with whatever it is,

Thank you so much!

September 12, 2023.
Date:

Respectfully!


Bennie Wicker, Jr., #122304
Evans Correctional Institution
Dorm Cheraw Unit, B-side, Room 153
610 Highway 9 West
Bennettsville, South Carolina 29512
(Pro Se Litigator)

(page two of two w/ attachments)

cc:
SCDC General Counsel Joseph Shakibanasab
SCDC Headquarters/Office Of General Counsel
4444 BroadRiver Road/ PO Box 21787
Columbia, South Carolina 29221-1787

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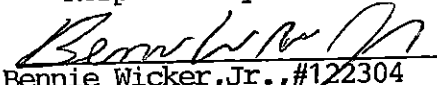
SUPPORTING SWORN AFFIDAVIT

PERSONALLY, APPEARED, BEFORE ME, Bennie Wicker, Jr., #122304, who first being duly sworn deposes and state that the following statements are true and accurate, and so swearing under the penalty of perjury:

- (1) I, swear that the statements I have made in the two page Motion To Proceed in Forma pauperis are true and accurate and that the fears and concerns expressed in the Motion are real and true to me.
- (2) that I believe if I am not allowed to proceed at this time without paying the filing fee, I will not be able to meet the 30 day time limit for filing my Notice Of Appeal and I thereby believe that my appeal by right will be denied me
- (3) That the supporting documents attached in support of this Motion are true and accurate copies of their originals just as I recieved them and I have in no way altered or changed them.
- (4). That I honestly believe that the check will not arrive back to me in a timely matter which will allow me to meet the 30 day filing time limit, therefore, at this time, I do'nt have the monies in my control to meet the 30 Filing Notice Of Appeal Deadline.

I do affirm that the above is true and accurate to the best of my comprehension beliefs and understanding...

Respectfully!



Bennie Wicker, Jr., #122304
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina 29512

September 12, 2023.
Date:



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

4 - Pages
Exhibit (D)

August 4, 2023

Via Interagency Mail

Inmate Bennie Wicker
SCDC Number: 122304
Evans Correctional Institution
Dorm-Room-Bunk: 3B-0153-A

Reference: Bennie Wicker, Jr. v. South Carolina Department of Corrections
Docket No. 21-ALJ-04-0153-AP

Mr. Wicker:

I am writing to let you know it will take additional time to finalize the backpay award. However, I have requested the check for your backpay award pursuant to Judge Durden's order dated June 6, 2023. The check is being issued from the treasurer's office and I anticipate it will take approximately fifteen days or so for the check to be issued from the treasurer's office. Once I receive the check, I will send it to you for endorsement and you will need to send the check back to be deposited into your account.

The gross backpay award for your participation in Shaw Industries was calculated to be \$25,262.65. This is before the statutory deductions and taxes. SCDC will take out the statutory deductions out of the funds once the check is endorsed. I also want to make clear SCDC will not be responsible for taking out your state and federal taxes. You will be responsible for any tax liability. SCDC will send you a 1099 form. You will need to consult with your tax professional.

Thank you for your patience. Please let me know if you have any questions.

With best regards, I am

Sincerely,

Joseph R. Shakibanabasab, SC Bar No. 102825
Staff Attorney
Office of General Counsel

cc: Honorable Deborah Brooks Durden, via interagency mail

September 12, 2023

Bennie Wicker, Jr., #122304
Evans Correctional Institution
Dorm Cheraw B-side, Room 153
610 Highway 9 West
Bennettsville, South Carolina

29512
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SEP 15 2023

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk Of The S.C. Court Of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re; South Carolina Department Of Corrections, Respondent, -versus- Bennie Wicker, Jr.,
#122304, Appellant, Case Number: 21-ALJ-04-0181-IJ

Dear Ms. Gee, Clerk Of SC Court Of Appeals,

Enclosed for filing is a Notice Of Appeal in the above case. Also enclosed are the following:

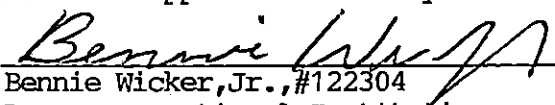
- (1). Proof Of Service of the Notice Of Appeal on the Respondent and a copy of the same on the Clerk Of Court for the SC Administrative Law Court.
- (2). A copy of the Order which is to be challenged on appeal. The Order is attached to the Notice Of Appeal.
- (3). An application to proceed in forma pauperas without paying filing fee. However, I have requested that The mailroom clerk request a check for \$100.00¢ be withdrawn and made out for you for the filing fee from my E.H. Cooper Trust Fund Account, I have attached the proof and affidavit to my motion to proceed without paying the filing fee until the check gets back to the institution and I forward it to you, also if the filing fee is more than the \$100.00, please let me know so I can make the arrangements with you and the court to pay the rest,

(4) As Extra copy of same

Note: Please be aware that Im placing this Notice Of Appeal in the US Postal Mail on this day of September 12, 2023, certified mail, I dont know if its prison officials or a problem in the postal system, but for some reason I keep having problem with recieving my legal mail and the legal mail I sent out in some cases, like this one Im appealing, it took me 7 days to get the Respondents Motion To Dismiss and I responded within 4 days of recieving it, which thee Administrative Law Judge alleges she did not recieve it, which I proved I sent the Objections, but she had already signed an Order granting Motion To Dismiss, it took me 14 days to recieve her Order and I know its no way it shoud have taken 14 days for me to get mail from Columbia, SC.... I just want you to be aware of that in case you don't get this Notice of Appeal in a timely manner.

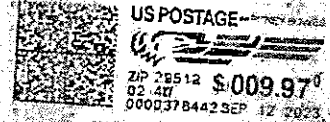
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September 12, 2023
Date:

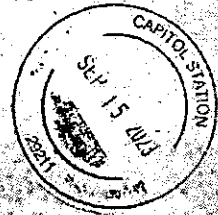

Bennie Wicker, Jr., #122304
Evans Correctional Institution
Dorm Cheraw B-side, Room 153
610 Highway 9 West
Bennettsville, South Carolina 29512

CC: SCDC General Counsel Joseph Shakibanasab
SCDC Headquarters? Office Of General Counsel
4444 Broadriver Road/PO Box 21787
Columbia, SC 29221-1787

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The Honorable Clerk of Court for SC Court of Appeals
South Carolina Court of Appeals
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