

State Of South Carolina  
Court Of Appeals.

Michael J. Ferola # 291941

Appellant

- VS -

S.C. Department Of Corrections

Respondent (s)

Appeal From Clarendon County  
Court Of Common Pleas.

W. Jeffrey Young  
Circuit Court Judge

Initial Brief Of Appellant

Michael J. Ferola

Michael J. Ferola # 291941

Evans Correctional Institution

610 Hwy 9 West

Bennettsville, SC 29512

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## STATEMENT OF Issues ON Appeal

1) Did Appellant Motion To Proceed In Forma Pauperis AND Complaint UNDER South Carolina Tort Claim Act meet Statutory OR Constitutional Provision requiring the waiver of said fees.

## Statement Of Case

On or about April 1, 2013 appellant filed a civil complaint along with a motion To Proceed IN forma Pauperis alleging violation of the South Carolina Tort claim Act 15-78-10 AND 15-78-60 (5) (25) failure to protect, Gross Negligence, and Assault + Battery. On or about April 11, 2013 the Honorable Circuit Court Judge W. Jeffrey Young issued a written order denying appellants motion To Proceed IN forma Pauperis stating said complaint did not meet requirements to waive said filing fees. This appeal follows as the order has the effect of discontinuing the action and ending the case. Lakes V State 510 SE2d 228 (SC App 1998) S.C. Code ANN 14-3-330 (2) (a). This court has jurisdiction to hear this appeal pursuant to S.C. Code ANN 14-3-330 (2) (a).

## Argument(s) / Facts

A) Did Appellant Motion To Proceed In Forma Pauperis AND Complaint Under South Carolina Tort Claim Act meet Statutory OR Constitutional Provision requiring The waiver of Said Fees.

Appellant an inmate confined in the South Carolina Department of Corrections as a result of a assault which took place on Appellant after respondents were made aware of said assault, pursuant to the South Carolina Tort Claim Act 15-78-10, appellant filed a complaint before the Court of Common Pleas in Clarendon County invoking the Court's Jurisdiction under Rule 3 (a), (b), (1), of the S.C. Rules. Civ. Procedure.

Appellant's complaint alleged Assault + Battery and Gross Neglegence against respondents under 15-78-60 (5), (25) which states;

The governmental entity is not liable for a loss resulting from . . . . (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a "grossly negligent" manner.

Based upon the fact the SC Tort claim Act is a Statutory Law Appellant should have been approved to Proceed

without payment of said fees. It is well settled that when fundamental rights are involved, the constitution requires that an indigent be allowed access to the courts. Martin v State 321 SC 533, 471 SE2d 134 (1995); Boddie v Connecticut 401 US 371, 91 Sct 780 (1971). Due Process prohibits denial of access to the courts based solely on a inmate inability to pay. Boddie v Connecticut 401 US 371, 91 Sct 780 (1971); State v Dugan 22 SC 87, 1884 WL 4625 (1884).

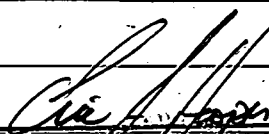
Conclusion:

Wherefore, based upon the fact Appellant complaint meets both the statutory and constitutional requirements along with rule 3 (a) (b) (1) of S.C.R. Civ. Proc. said fees should have been waived and appellant allowed to proceed IN forma Pauperis.

Respectfully Submitted

Michael J. Ferola  
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Subscribed and Sworn before me  
this 10<sup>th</sup> day of June 2013

  
Notary Public

  
My commission expires