

In The Supreme Court of South Carolina

Appeal From The South Carolina Court of Appeals

[Judges name can not be read]

Appellate Case No. 2023-001275

Christopher Kennan, Appellant,
v.

South Carolina Department of Corrections, Respondent.

Notice of Appeal

Christopher Kennan appeals the order of dismissal of the Honourable
[name is impossible to decipher] dated Jan. 30th, 2024. Appellant received
written notice of this entry of this order of dismissal on Feb. 2nd, 2024.
(see "exhibit M" for order of dismissal signed by the judge).

February 9th, 2024

~~Christopher Kennan~~
Christopher Kennan #385016
Pro Se litigant
EVANS CJ
610 HWY 9W
Bennettsville, SC 29512

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SC Court of Appeals

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S.C. SUPREME COURT

2023-001275
The State of South Carolina
In the Supreme Court

Appeal From the South Carolina Court of Appeals
[Judges name can not be read - see 'Exhibit M']

Appellate Case No. 2023-001275

Christopher ~~M~~ Kennan, Appellant
v.
South Carolina Department of Corrections, "Respondent"
Brief of Appellant

Christopher Kennan #385016
Pro se litigant
Evans CI
610 HWY 9W
Bennettsville, SC 29512

[There is no attorney for any Respondent]

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II. There can not be a notice of Appeal made on any defendant when there is no filed case in courts record

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S.C. SUPREME COURT

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Ex Parte Martin, 321 S.C. 533, 535 (1995)

Hiers v. South Carolina Power Co., 198 S.C. 280, 17 SE 2d 698 (1941)

SC statutes and Court Rules

SCACR ^{rule} 203 (b)(1)

SC Const. Art. I, § 15 and SC. Const. Art. I, § 2

SC Const. Art. V, § 5

SCRMCR Rule 1
SCRCR Rule 3(a) and 3(b)

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§ 14-3-333

Federal Court Rules

FRCR Rule 5(a)(1)(B)

FRCR Rule 5(d)(4)

~~SCRMCR Rule~~

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S.C. SUPREME COURT

2023-001275
Statement of Issues on Appeal

3

- (a) Does the South Carolina Constitution require that indigent litigants be allowed to proceed in forma pauperis when the issues in the Complaint concern "fundamental constitutional rights"?
- (1) If yes, Does plaintiff claim in his Complaint that any fundamental Constitutional rights have been violated by the Defendants?
- (b) If a Court of Common Pleas refuses to approve Plaintiff's in forma pauperis motion and subsequently doesn't assign a case number to it, nor file the Complaint, can the named defendants be properly served with the summonses and deny plaintiff in forma pauperis status?
- (1) If this decision is appealed, is the defendant required to be served with a notice of appeal for this unfiled Complaint?
- (i) Is it possible to comply with ~~SCA~~ SCACP Rule 203(b)(1) if SCACP Rule 5(d) wasn't allowed to be followed due to the lower court's refusal to file his Complaint?
- (ii) IS a Court of Common Pleas denial of Plaintiff's in forma pauperis motion considered an 'entry of the order of judgement' for rule 203(b)(1) of SCACP if the case was never filed by that court, thus no judgement was recorded on any record? ~~SCACP~~
- (2) Can plaintiff comply with Rule 4(d)(5), which requires that the Attorney General of South Carolina be served by registered or certified mail - or by Sheriff or his deputy if the Court of Common Pleas denies his in forma pauperis motion and to file his Complaint?
- (3) If a defendant is not served a complaint nor summons because Plaintiff's case was never filed in the lower court, should this unserved defendant be served notice of appeal for this same unrecorded case - particularly when the Appeal is strictly concerned with getting Plaintiff's case filed so that he can then provide proper service as required under SCACP Rules 5(d) and 4(d)(5)? (similar to question (a)(i) above with slight variance).

Statement of the Case

2023-001275

(4)

- on 5/13/23, plaintiff sent his 1983 complaint, in-forma pauperis application, summonses for each defendant, to Clarendon County Court of Common Pleas to initiate this action. (See "exhibit A.")
- on 6/14/23, plaintiff was sent back his complaint, unfiled, along with a demand of \$150 filing fee. (See "exhibit B.")
- on 6/17/23, plaintiff wrote the clerk of Clarendon County Court of Common Pleas to be sent an alternate in-forma pauperis form that would be acceptable to the court (See "exhibit C").
- Between 6/19/23-7/1/23 - plaintiff resent his complaint and the in-forma pauperis application that this court uses to the Clarendon County Court of Common Pleas.
- On 7/6/23, Judge R. Ferrell Cothran Jr., Judge, Third ~~State~~ ^{Judicial} Circuit, denied Plaintiff's motion to proceed in-forma pauperis without filing his complaint nor assigning a case number to it. (See Exhibit D).
- on 7/14/23, plaintiff ~~resent~~ ^{submitted} his motion to reconsider/amend judgement. (See Exhibit E).
- 7/24/23, Judge R. Ferrell Cothran denied Plaintiff's motion to reconsider and did not file this case nor sign any case number.
- Within ten (10) ^{days} Plaintiff sent notice of appeal to the clerk of Clarendon County Court of Common Pleas and to the South Carolina ~~Court~~ ^{Supreme} Court along with his complaint, in-forma pauperis application, ~~and~~ an initial appellate brief. Nothing was sent to any defendant (because the case wasn't filed, and there was technically no respondent on any record of plaintiff worked ~~under this assumption~~).
- 8/11/23 - ~~The~~ South Carolina Supreme Court, ~~Judge~~ ^{Judge} ~~the Honorable~~ ~~Justices~~ ~~Justices~~ ~~Justices~~ the Honorable Jenny A. Kitchings, provided plaintiff's case as Appellate case no. 2023-001275 and transferred the case to the South Carolina Court of Appeals. (See "exhibit H")
- 8/29/23 - S.C. Court of Appeals sent plaintiff notice of deficiencies and demanded payment of \$250.00 filing fee (see both "Exhibit I" and "Exhibit J" (2 pages)).
- 9/18/23 - Plaintiff responded to the S.C. Court of Appeals regarding their correspondence from 8/29/23, and to check on the status of his case; multiple letters ~~were sent~~ ^{proof of service}
- 1/3/24 - S.C. Court of Appeals sent notice to plaintiff that it required a ~~letter~~ ^{proof of service} within ten (10) days and that the court construed his letter from 9/18/23 to be a motion to proceed in-forma pauperis (See "exhibit K" and "Exhibit L").
- 1/15/24 - In order to comply with the court's request from 1/3/24, plaintiff sent a copy of his complaint and appeal to SCDC Headquarters. Copy is in the record - along with proof of service to the S.C. Court of Appeals, notice of appeal was also included.
- 1/30/24 - the S.C. Court of Appeals sent plaintiff a letter of dismissal. (See Exhibit M)
- 2/9/24 - notice of Appeal sent to all parties name in Certificate of service.

Standard of Review (Please construe this page liberally)

Per S.C. Const. Art. V, § 5 - "Jurisdiction of Supreme Court"
"The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law... The Supreme Court shall constitute a court for the correction of errors of law under such regulations as the General Assembly may prescribe."

"In equity causes the South Carolina Constitution has laid no restrictions upon the power of the Supreme Court to hear appeals, both as to law and the facts." Carolina Nat. Bank v. Homestead Building & Loan Ass'n (S.C. 1899)
56 S.C. 12, 33 S.E. 781

"Supreme Court is for correcting errors of law." Hiers v. South Carolina Power Co., 198 S.C. 280, 17 S.E. 2d 698 (1941) and pursuant to § 14-3-330

There has been no jury, no trial and no review of the facts of the case at the Appellate level, prior to its order of dismissal - which only looked at the service of process or lack thereof, made upon Respondents.

This appeal hinges on whether or not service of process is required, as a matter of law, for ^{notice of} appeal from a lower court, on the respondents - who have ~~not~~ been served, neither summons nor complaint, ~~and~~ the ~~in~~ ^{inferior} court ~~to~~ ^{denied} ~~the~~ ^{plaintiff's} in forma pauperis motion and ~~to~~ ^{declined} file his complaint without prepayment of fees. Furthermore, the dismissed appeal concerns, as a matter of law, whether plaintiff's complaint relates to violations of his fundamental Constitutional rights - and if yes, ~~does~~ ^{has} he ~~has~~ a right to proceed in forma pauperis.

~~Plaintiff~~

Facts

The record for review consists only of plaintiff's motions and submissions to the ^{lower} Court, the South Carolina Supreme Court's order transferring this case to the South Carolina Court of Appeals and the S.C. Court of Appeals subsequent dismissal of this case which cited SCAER 203(b)(1) as the reason to dismiss, a letter ^{letters} this court sent to plaintiff (see "Exhibits ~~8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 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992, 993, 994, 995, 996, 997, 998, 999, 1000 other than the paperwork plaintiff included with his appeal, there is no record of this case in the Clarendon County Court of Common Pleas, because the court would not file this case without prepayment of fees; despite proof of plaintiff's indigency. The Clarendon County Court of Common Pleas did not assign this case a case number and therefore there has been no service of process made on the opposing party until January 5, 2024 when the S.C.C.A requested plaintiff do so and again for this complaint, nor was any notice sent to the S.C. Attorney General.~~

Exhibits A-M are included with this appeal and are incorporated into this Appeal when cited - the inferior court entered an order denying his in forma pauperis application on July 6, 2023.

The appeal arises out of this order of dismissal of an appeal from the Circuit Court not allowing plaintiff to proceed in forma pauperis thus waiving the prepayment of filing fee requirement.

Plaintiff has offered to pay the court fees later as a restitution. Notice of Appeal has been made on all parties listed on the Certificate of service herein and dated January 9, 2024.

Arguments I. Plaintiff's in forma application should ^{have} been approved. ⑦

I. Within Plaintiff's Complaint he asserts that certain fundamental state and Federal Constitutional rights have been violated by the Defendant.

Plaintiff should have his in forma pauperis application approved as a matter of law. He is indigent and has provided the courts with adequate documentation proving his indigency. The court of Common Pleas for Caledon County erred in its decision not to approve plaintiff's in forma pauperis application and in its denial of allowing plaintiff to file his claim without prepayment of fees. If plaintiff isn't allowed to file his case in the lower court he cannot provide service of process to either the defendants or the South Carolina Attorney General as required under SCRPC rules 5(d) and 5(d)(4)(c)(5) (see "Exhibits E" and "F" for a copy of plaintiff's motion to reconsider and the lower courts subsequent denials, in "Exhibit D" and "Exhibit G" of his in forma pauperis application. Plaintiff's complaint concerns fundamental constitutional violations by the defendants.

Pursuant to SCRPC 3(b) and this court's holdings in EX parte Martin, 321 S.C. 533, 535 (1995) id. at 535, citing Boddie v. Connecticut, 401 U.S. 371 (1970) ("Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed to access the courts.")

In Booker v. SCDC, 855 F.3d 533 (4th Cir. 2017), "this court has long held that prison officials may not retaliate against prisoners for exercising their to access the courts... which is a component of the right to petition for redress of grievances [...and] there is an overwhelming "consensus of persuasive authority" that ~~prison~~ inmates possess a First Amendment right to be free from retaliation for filing a grievance.")

In paragraphs 50-57 of Plaintiff's Complaint he stated that the defendants admitted to retaliating on plaintiff because he filed a grievance related to a violent inmate-on-inmate assault that the defendants somehow misconstrued. A major admitted verbally and acknowledged in writing that she retaliated on Plaintiff specifically because he wrote that grievance.

Access to the Court is both a Federal Constitutional right and a fundamental SC Constitutional right under ~~Article~~ Art. 1, § 2.

A large part of Plaintiff's complaint is related to his fundamental state and Federal rights to be free of cruel and unusual punishment being violated by the defendants under the 8th Amendment of the U.S. Constitution and S.C. Const. Art. 1, § 15 respectively.

In his Complaint Plaintiff reports that a member of SCDC staff ordered other inmates to assault him that he was forced to live in a cell that reeked of the human shit his neighbor smeared all over his cell for nearly a week despite his protests, and he had to eat in that ~~filthy~~ ^{stinky} smell which caused him to vomit. he received only around four (4) hours of outside recreation in seven (7) months.

which was not only extremely atypical to inmates in General Population, but also atypical to other inmates held in the same Restrictive Housing Unit as plaintiff who received much more time outside of their cells; Atypically to Gen. Pop. plaintiff's shower was located in his cell so he wasn't even allowed out of his cell for this basic activity; the moisture from the in-cell shower caused black mold on the cell floor, walls and ceiling and made plaintiff's bedding wet three times a week.

These claims of atypical treatment equate to more than mere negligence, they defendants knowingly treated him, and left him in conditions of confinement that rose to levels of cruel and unusual punishment as cited in his complaint.

Plaintiff goes on further to state the seven months he was held in solitary confinement without any significant time out of his cell was excessive and atypical compared to others - even those held in "RHU" with him. He further claims that these conditions caused him to deteriorate mentally and caused him to have audio and visual hallucinations, severe anxiety and nightmares, etc.

During this time in solitary plaintiff went months without seeing any mental health therapist or Doctor, despite the fact that he was put in "RHU" following a violent sexual assault. Many requests made by plaintiff to see someone from mental health were ignored and eventually he attempted an ill-advised and regrettable suicide ~~attempt~~ because he felt hopelessly stuck in his situations and conditions and was not being helped to deal with the aftermath of his assaults. Common decency and modern social norms and standards hold that victims of sexual assault should receive mental health treatment.

In Carlson v. Green, 466 U.S. 14 (1981) and elsewhere, the courts have widely recognized that inadequate medical care can rise to the level of cruel and unusual punishment. The S.C. Const. Art. 1, § 15 holds that cruel and unusual punishment violates fundamental rights of the states citizens.

Further, SCDC has a policy that requires any inmate who wants protective custody ("PC") must receive a "PC Board" within seven (7) days so that he can be evaluated and to help the institution ^{determine} his custody level and if he needs to be transferred to another prison for his safety.

Plaintiff wasn't allowed a "PC Board" for 55 months primarily as punishment for his filing PREA related grievances. He was denied due process while he was indefinitely held at the time, without any form of appeal or ^{meaningful} consideration on the part of staff. (See paragraphs 43-57 of Plaintiff's Complaint)

On July 6, 2023 the Clarendon County Court of Common Pleas Judge R. Ferrell Cothran, Jr. denied plaintiff's motion and affidavit to proceed in forma pauperis without explanation (See "Exhibit D").

On July 24, 2023 His Honor subsequently denied plaintiff's Motion to Amend Judgement with little to no explanation and without allowing his case to be filed without prepayment. (See "Exhibit E" and "Exhibit G" respectively).

Since Plaintiff's Complaint was never filed, he was not allowed to provide service of process on the defendants as required under Rule 5(d) of SCRPC nor could he serve the A.G. of South Carolina pursuant to Rule 4 of SCRPC.

II. There can't be a notice of Appeal on any defendant when there is no case filed in any court record.

If a Complaint isn't filed by the court of Common Pleas, when it has jurisdiction, it isn't possible for Plaintiff to comply with Rule 5(d) of SCRPC which states "The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of summons and complaint." (Underlines were added for emphasis).

Ipso facto, if the case isn't filed there can't be any service of the summons or complaint; there is no case filed on any record in any court.

Rule 3(a) of SCRPC states, "A civil action is commenced when the summons and complaint are filed with the clerk of court [...]"

After the Clarendon County Court of Common Pleas denied Plaintiff's in forma pauperis application without allowing his case to be filed without prepayment, and despite no action being commenced, Plaintiff appealed to the South Carolina Supreme Court to overrule the lower court's denial of his in forma pauperis application.

Plaintiff appealed Judge Cochran Jr.'s decision for a myriad of reasons: first, he needed to toll the statute of limitations on his S.C. tort claims; he needed some sort of record of his case in the courts; he sought to have the lower court's decision overruled so he could file without prepayment of fees and so he could complete service of process; he needed some sort of case # assigned.

On August 11, 2023 - The Honorable Jenny A. Kitchings assigned this case ~~an~~ Appellate case No. 2023-001275 and transferred it to the South Carolina Court of Appeals (SCCA.) (See "Exhibit H")

On August 29, 2023 - the South Carolina Appellate court sent Plaintiff "Exhibit J" which discussed SCACR Rule 267 requirements and "Exhibit I" which was a request for proof of service ~~to more than~~ to be put in compliance with the SCACR - i.e. proof of service on Counsel for the Respondent.

There was, and still is, no "Counsel for the Respondent" because the case was never filed by the court nor summons/complaint issued.

These reasons along with Plaintiff's denial of his in forma pauperis application ~~being denied~~ were in fact the entire basis of his appeal. He needs to be allowed to properly conduct service of process on the defendants and to do this he needs the lower court to file his case ^{and issue the summons}. Plaintiff wrote SCCA multiple letters explaining this and on January 03, 2024 he received a reply in the form of "Exhibit K" again requesting proof of service within ten (10) days and "Exhibit L" stating that the court construed one of his follow-up letters written on September 8, 2023 as a motion in that court to proceed in forma pauperis.

Though part of plaintiff's letter asked the court to waive the \$250.00 filing fee for his appeal, he was primarily trying to explain that since the lower court denied his in forma pauper's application and refused to file his complaint - there wasn't any respondent of record prior to this appeal and therefore no one but the lower court to be sent a notice of appeal; this was the very reason plaintiff filed his appeal in the first place.

On January 5, 2024 plaintiff sent a copy of his complaint, summonses and notice of appeal to SCDC's office of General Counsel and sent a certificate of service to the S.C. Ct. A.

On January 30, 2024 the S.C. Court of Appeals wrote "Exhibit M" telling plaintiff that his appeal was dismissed because of a failure to provide timely service on the respondent and that "this appeal arises out of an order of the circuit court dated July 6, 2023 [Exhibit D] and [the proof of service provided shows service on January 5, 2024."

~~to~~ ~~ser~~

Plaintiff argues that the S.C. Appeals Court's decision is wrong as a matter of law in this specific case, for the reasons previously argued ineloquently and begs this court to vacate and remand.

Conclusion

The crux of this appeal in the South Carolina Supreme Court is as follows:

Rule 203(b)(1) of SCAER states, "a notice of appeal shall be served on all respondents within thirty (30) days after receipt of entry of the order of judgement."

Plaintiff contends there was no "entry" because there was no record to enter judgement into—because his case wasn't filed.

Further, according to "Black's Law Dictionary," "Respondent" is a party against whom an appeal is taken... someone who answers questions.

According to Rule 1 SCRA, "Answer" means "the paper filed by the party responding to the complaint" and "summons" means "the paper ~~filed by the court~~ issued by the court which orders the defendant to respond to the complaint."

If the court doesn't file the complaint nor issue a summons there can be no answer from any defendant and therefore there ~~is~~ can be no respondent on appeal; prior to the appeal there was no record of this case except for unfiled documents sent to plaintiff by the lower court.

In this case, there is no legitimate way for plaintiff to provide notice of appeal to any defendant; ~~but~~ when the court seemed to order he do so in "Exhibit K"—he did so, to the named defendant (who may not even have known there was any case or proceedings against them to begin with).

Per SCRPC (3)(a) "a civil action is commenced when the summons and complaint are filed with the clerk etc. SCRPC (3)(b)(1) allows the lower court to disallow the filing of any complaint ~~where plaintiff~~ doesn't pay the \$150 filing fee when it denies plaintiff's motion to proceed in forma pauperis—even when plaintiff meets the indigent qualifications; This court is the sole remedy for the (SCRA) torts listed.

It's just as unfair to the judicial process to require notice of appeal on defendants in an unfiled case, who weren't served summons nor complaint, as it would be to hold respondent in default for failure to appear for a case they weren't made aware of. Under Rule 5(a) of SCRPC no service would be required if a defendant is held in default for such a failure to appear.

To paraphrase Johnnie Cochran in the O.J. Simpson case, "If the lower court didn't file it, there can be no notice of appeal sent to Respondent"

OR
"If Plaintiff's denied in forma pauperis, there's no case on record prior to him appealing it."—thus no notice of appeal technically possible for Respondent. No?

Plaintiff begs this court to vacate and remand the S.C. Court of Appeals dismissal of this case and that this court give directions as to what constitutes fundamental Constitutional rights which, if shown to exist in his complaint, ~~it~~ would allow plaintiff to proceed in forma pauperis.

Thank you.

Respectfully,
Christopher M. Kennan #385016
Christina

on this 9th day of February, 2024
at 610 HWY 9W
Bennettsville, SC 29512