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APR 22 2024  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Administrative Law Judge

ALC Docket No.23-ALJ-04-0031  
Appellate Case No. 2024-000295

Michael J. Pettinato, #218405;.....Appellant,

v.

The South Carolina Department of  
Probation, Parole and Pardon Servs.,.....Respondent.

**RENEWED MOTION AND AFFIDAVIT  
TO PROCEED INFORMA PAUPERIS**

I, Michael J. Pettinato, the above Appellant, herein submit and file this Renewed Motion To Proceed Informa Pauperis and Affidavit Of Indigency, and would respectfully show this Honorable Court the following:

1. I am the Appellant in the above captioned action and I am entitled to redress in this matter.

2. I am indigent, have about \$0.36 in my E.H. Cooper Trust account, have had approximately \$1000.00 in my account last year and I receive a total of about \$50.00 to \$100.00 from friends and family about every three months, which I use to purchase hygiene and food items from the canteen.

3. I hereby request that this Honorable Court allow me to proceed in this action without prepayment of fees and costs.

4. I filed a Notice Of Appeal from an Order of the Administrative Law Court dismissing my appeal from a decision of the SCDPPPS denying me, without Due Process of Law, of my Statutory Right to appear before the Parole Board to argue my case for parole and denying me the fundamental right to be heard at a meaningful time and in a meaningful manner.

5. I attached to my Notice of Appeal, a Motion To Proceed Informa Pauperis, and an Affidavit Of Indigency attesting to the fact that I am in fact, indigent.

6. On April 2, 2024, Appellant received an Order from this Court, filed March 28, 2024, stating the following:

"Appellant filed a notice of appeal from an order issued by the Administrative Law Court dismissing his appeal from a denial of parole. Appellant also filed a motion to proceed in forma pauperis. Appellant has not met his burden of establishing he has a statutory or constitutional right to proceed in forma pauperis. See Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995); James v. S.C. Dep't of Probation, Parole and Pardon Servs., 377 S.C. 564, 660 S.E.2d 288 (Ct. App. 2008) (holding the denial of an inmate's parole request absent a permanent denial of parole eligibility does not implicate a state-created liberty interest). Accordingly, Appellant's motion is denied."

"Appellant has twenty days from the date of this order to pay the \$250 filing fee. Failure to provide the filing fee will result in the dismissal of this appeal."

Order filed March 28, 2024.

7. Respectfully, I had no Notice of the requirement that I must show the Court that I am anything other than a poor person as I have seen no procedure for this as it pertains to appeals from the ALC, and the Order made no mention of the Affidavit of Indigency I filed contemporaneously with the Notice Of Appeal and the Motion To Proceed In Forma Pauperis.

8. In this respect, I point out that I was deprived of my Social Security disability benefits (without Due Process) after I was incarcerated in 1994 thereby insuring that I lost my property, as well as property that

was being purchased for my children because of being unable to pay the taxes and make payments, and, the SCDC stole about \$17,000.00 that I am due in compensation for my work in the Prison Industries Projects, otherwise, I would be more than happy to pay the filing fee up front, however, I am indigent.

9. I respectfully submit that the Order denying me In forma Pauperis Status relies on an erroneous finding that I am appealing a denial of parole, **which I am not**, the Ex Part Martin Case does not apply, and, the case of James v. S.C. Dep't of Probation, Parole and Pardon Services also supports my request to proceed In Forma Pauperis.

10. I am not making a challenge to the "denial of parole," as the ALC has no authority to review the decision of the Board to deny parole. See Cooper v. S.C. Dep't of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008).

11. I am challenging the fact that the SCDPPPS, deprived me, without Due Process of Law, of my statutory right to appear before the Board to argue my case for parole as mandated by S.C. Code § 24-21-50 (Supp. 2009), my Statutory right to receive adequate Notice of the time and place my Parole Hearing was to be held so I could appear and exercise my statutory right to argue my case before the Board as allegedly "guaranteed" by the 14th Amendment to the U.S. Constitution, as well as Art. I, § 3 and § 22 of the Constitution of South Carolina.

12. I have a liberty interest in appearing at a Parole Hearing and in gaining access to the Parole Board. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 597-598, 576 S.E.2d 146, 148-149 (2003) (holding that an Inmate has a liberty interest in gaining access to the Board, although there is no protected right to parole). Id. See James

v. S.C. Dep't of Prob., Parole & Pardon Servs., 376 S.C., 392, 656 S.E.2d 399 (Ct. App. 2008) ("... inmates have not protected right to parole, only the right to a parole hearing"). I also have a statutory right to appear before the Board to argue my case. See S.C. Code Ann. § 24-21-50 (Supp. 2009) as well as a fundamental right to be heard at a meaningful time, in a meaningful manner. S.C. Const., Art. 1, § 3 & Art. 1, § 22; Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997) (holding art. I, § 22 of the S.C. Constitution guarantees persons the right to notice and an opportunity to be heard by an administrative agency). So much for this "guarantee" if a person is poor.

9. Ex Parte Martin does not apply because it involved an indigent litigant's motion to proceed in forma pauperis pursuant to Rule 3, SCRCF, in which a Circuit Court Judge would have the opportunity to review the complaint to make a determination as to whether it fits within one of the statutory or constitutional exceptions of a filing fee. See Ex Parte Henry W. Martin, 321 S.C. 533, 471 S.E.2d 134 (1995). This is not a civil action and there is no "Complaint," but rather a "Notice of Appeal," and Appellant did not see how to alert the Court as to the Nature of his appeal as the Notice of Appeal is not sufficient and Appellant does not find any procedure for this requirement.

10. As for James v. S.C. Dep't of Probation, Parole and Pardon Services, 377 S.C. 564, 660 S.E.2d 288 (2008), to the extent that it holds that an Inmate must have a state-created liberty interest in order to be permitted to proceed in forma pauperis in his Court, Pettinato, as shown up above, has a liberty interest in having a parole hearing, at gaining access to the Board, and to argue his case to the Board, all of which he was denied, without due process, because the SCDPPPS sent him a Notice showing

that his hearing was to be held at Ridgeland, on April 12, 2023, at about 7:45 AM, but it was actually held at Allendale, on April 12, 2023, at about 3:45 P.M., without him being notified and even given a chance to appear.

11. Finally, Pettinato respectfully submits that the Order of the Administrative Law Court falsely holds, inter alia, that Pettinato filed his Notice of Appeal on September 26, 2023, making it untimely, when it was in fact filed and served on July 5, 2023, and both, the ALC and Respondent knew this. See Order dismissing Appeal and attached Notice of Appeal.

12. The United States Supreme Court stated in Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) that "due process requires, at a minimum, that absent countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Id. 401 U.S. at 377, 91 S.Ct. 780.

Furthermore, in denying Appellant in forma pauperis status in this matter, the Court will be arbitrarily denying Appellant a "remedy" for the wrongs committed by SCDPPS "employees" and "officials", solely because Pettinato is a "poor person," caused in part, by the U.S., SCDC and some of his own actions and inactions.

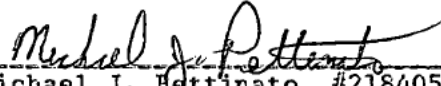
Ubi jus, ibi remedium translates to: "Where there is a right, there is a remedy." Black's Law Dictionary 1520 (11th ed. 2019). The right to a remedy is itself, a right protect by due process. See e.g. United States v. Loughrey, 172 U.S. 206, 232, 19 S.Ct. 153, 43 L.Ed. 420 (1898) ("The maxim, ubi jus, ibi remedium; lies at the very foundation of all systems of law."); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803) [I]t is a general and indisputable rule, that where there is a Legal right,

there is also a legal remedy by suit or action at law, whenever that right is invaded. ...[F]or it is a settled and invariable principle in the laws of England, that every right when withheld, must have a remedy, and every injury its proper redress." (quoting Blackstone's Commentaries) The Right To A Remedy Is A Core Component Of Ordered Liberty. Id.

Appellant respectfully requests that this Honorable Court review this Appellant's Renewed Motion to Proceed In Forma Pauperis, the Affidavit Of Indigency, the Order of the ALC being appealed, the attached Notice of Appeal to the ALC dated July 5, 2023, and GRANT Appellant a little bit of Due Process that he was deprived of by the Agency, by GRANTING his Renewed Motion To Proceed In Forma Pauperis.

Respectfully Submitted,

April 15, 2024  
Fairfax, South Carolina

  
Michael J. Pettinato, #218405  
Allendale C.I., F3 A-24  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant, Pro Se

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

July 5, 2023

Honorable Jana E. Shealy  
Clerk  
S.C. Administrative Law Court  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

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APR 22 2024  
SC Court of Appeals

RE: Notice of Appeal of Final Decision;  
Appeal of Decision Denying Motion To  
Vacate, Rehear or Reconsider; and copies of  
Envelopes showing dates Decisions arrived at  
Allendale Corr., Inst. Mail Room

Dear Ms. Shealy:

Enclosed for filing please find a Notice of Appeal and other documents  
as referenced above.

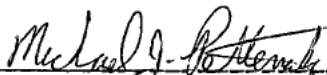
Also enclosed please find a copy of each of the documents referenced  
above of which, after being clock-stamped and having a Docket Number placed  
on them, I ask that you please send copies of same to me for my records.

I have enclosed a self addressed, postage prepaid envelope as is  
customary.

I also ask that you please provide me with any forms that may be  
available for me to have this case expedited or to seek an injunction  
because I am being prejudiced and irreparably harmed by the Quasi-Judicial  
decision of the Board to Deny me Parole without allowing me to be present  
and argue my case as I have a right to do by law, of which the Parole  
Members all know very well, and of which was caused by their own Agency's  
unlawful failure to provide me with adequate Notice of the time, date and  
place of the hearing and the fact that I won't have another hearing for two  
(2) years.

Thank you in advance for your assistance in this matter.

Respectfully,

  
Michael J. Pettinato

cc: File

Exhib. 1

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

RECEIVED

APR 22 2024

SC Court of Appeals

NOTICE OF APPEAL

DOCKET NO. \_\_\_\_\_

Michael J. Pettinato, #218405,

Appellant,

vs.

South Carolina Dep't of Probation,  
Parole and Pardon Servs.,

Respondent.

Notice is hereby given that Michael J. Pettinato does hereby appeal the NOTICE OF REJECTION of the S.C. Dep't of Probation, Parole and Pardon Servs., dated April 12, 2023 and received by Appellant on April 20, 2023 and the Final Decision of the S.C. Dep't of Probation, Parole and Pardon Servs., dated June 12, 2023 and received by Appellant on June 15, 2023, both of which are attached hereto and incorporated into the record by reference.

A General Statement of the grounds and issues for appeal is:

The Findings, Inferences, Decisions, Actions and Omissions of the Agency violate all provisions of S.C. Code § 1-23-380(5)(a)-(f), as amended (2008) and deprive Appellant of his rights guaranteed and Protected by U.S.C.A. 14th Amend.; S.C. Const., art. I, § 3; & Art. I, § 22; and S.C. Statutes; Federal Case Law; State Case Law; and SCDPPPS Regulations, Policy and Procedure.

I. Pettinato was Arbitrarily DENIED: (a) Adequate Notice of the Time Date and Place that his Parole Hearing was to be held whereas he received Notice of only twenty three (23) days of the hearing Date, Was Provided with the wrong Place where the hearing would be held, and the wrong Time the hearing would be held; (b) Right Of Access To The Board; (c) Right To An Opportunity To Be Heard At A Meaningful Time And In A Meaningful Manner; (d) Right To Argue His Case To The Board; (e) Right To Require The Board To Adhere To Statutory Requirements; (f) Right To Have The Board Consider All Letters/Evidence Sent In Support Of Him Being Paroled; (g) Right To Compel The Agency To Follow Its Own Procedures; (h) Right To Compel The Board To Adhere To State Parole Statutes and The Intent Of The Legislature; and, (i) Right to a full, fair and meaningful parole hearing which, inter alia, includes a Board consisting of all unbiased members having no conflict of interests.

II. Pettinato was prejudiced and continues to be irreparably harmed where the unlawful and arbitrary actions and omissions of the Board and its agents, deprived him of his Constitutional and Statutory rights asserted above and deprived him of a full, fair and meaningful opportunity to obtain conditional release and the benefits of conditional release, of which he has rightfully earned.

Michael J. Pettinato, #218405  
Appellant's Name

Michael J. Pettinato  
Signed

Allendale Corr., Inst., F3 A-27  
Mailing Address  
1057 Revolutionary Trail

June 26, 2023  
Date

Fairfax, SC 29827

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

**RECEIVED**  
APR 22 2024  
SC Court of Appeals

Michael J. Pettinato, #218405, )  
  ) Appellant, )  
vs. )  
South Carolina Dep't of Probation, )  
Parole and Pardon Servs., )  
  ) Respondent. )

**CERTIFICATE OF SERVICE**

Docket No. \_\_\_\_\_

I, Michael J. Pettinato, hereby, do Swear under penalty of perjury, that I have on this date, served a True Copy of a NOTICE OF APPEAL, a NOTICE OF HEARING dated March 8, 2023 and copy of the Envelope showing that it was received by the Institutional Mail Room on Mar 17, 2023; a NOTICE OF REJECTION dated April 12, 2023 and copy of the Envelope showing that it was received by the Institutional Mail Room on April 20, 2023; and the FINAL DECISION DENYING APPELLANT's self-styled Letter Motion To Vacate, Rehear, or Reconsider the Decision and a copy of the envelope showing that it was received by the Institutional Mail Room on June 14, 2023; by hand delivering same to the Allendale Corr., Inst., Mail Room Clerk, for deposit into the U.S. Mail, First Class Postage prepaid, addressed as follows:

S.C. Dept. of Probation,  
Parole & Pardon Servs.  
Matthew Buchanan, Esq.  
General Counsel  
293 Greystone Blvd.  
P.O. Box 207  
Columbia, SC 2902

July 5<sup>th</sup>, 2023  
Fairfax, South Carolina

Michael J. Pettinato  
Michael J. Pettinato, #218405  
Allendale C.I., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

Exhib. 3

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

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APR 22 2024

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Docket No. 23-ALJ-15-0031-AP

Michael J. Pettinato, #218405,.....Appellant,

v.

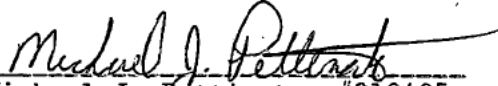
The South Carolina Department of Probation,  
Parole and Pardon Services,.....Respondent.

**PROOF OF SERVICE**

I, Michael J. Pettinato, herein CERTIFY under penalty of perjury that I have on this date, served a Renewed Motion To Proceed In Forma Pauperis in the above captioned case, upon the above Respondent by depositing a copy of same into the U.S. Mail, First Class Postage prepaid, addressed to:

S.C. Dep't of Probation, Parole  
and Pardon Service  
Attn: Matthew C. Buchanan, Esq.  
General Counsel  
293 Greystone Blvd.  
P.O. box 207  
Columbia, SC 29202

April 15, 2024  
Fairfax, South Carolina

  
Michael J. Pettinato, #218405  
Allendale C.I., F3 A-24  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant, Pro Se

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A24  
1057 Revolutionary Trail  
Fairfax, SC 29827

April 15, 2024

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APR 22 2024

SC Court of Appeals

Hon. Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Michael J. Pettinato v. SCDPPPS  
ALC Case No. 23-ALJ-15-0031-AP  
Renewed Motion To Proceed In Forma Pauperis  
and Proof of Service upon Respondent.


Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter, please find a Renewed Motion To Proceed In Forma Pauperis, and a Proof of Service of same upon General Counsel for the SCDPPPS.

Also enclosed, please find a copy of each of the above documents that I ask you to please file stamp and return to me for my records, if you would please do so. I have enclosed a self addressed, postage prepaid envelope for your convenience.

As always, I thank you in advance for your assistance in this matter.

Sincerely & Respectfully,

  
Michael J. Pettinato

cc: Matthew C. Buchanan  
File

Michael J. Pettinato, #218405  
Allendale Corr. Inst., P3 A-24  
1057 Revolutionary Trail  
Fairfax, SC 29827



RECEIVED

APR 22 2024  
SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS  
Honorable Jenny Abbott Kitchens, CLERK  
P.O. Box 11679  
Columbia, SC 29211

LEGAL MAIL