

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2300994

2013 AUG 19 10:00 AM
CLERK OF COURT
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Jack Edward Earl Parker vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Rule 12(b), SCRCP; Rule 41(a),
 Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this 19th day of July, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 19th day of July, 2013, and a copy mailed first class this 19th day of July, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jack Edward Earl Parker,

Plaintiff,

vs.

The State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-23-00994

ORDER

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I. INTRODUCTION/PROCEDURAL BACKGROUND

This is a takings case that the State of South Carolina moves to dismiss for failure to state facts sufficient to constitute a cause of action. For the reasons set forth below, the Court grants the Motion to Dismiss.

According to the Complaint, Plaintiff Jack Edward Earl Parker ("Parker") alleges he was arrested on a murder charge in 2001 and released on bond pending his trial. He was tried for murder in October 2003, and claimed self-defense. The case ended in a mistrial and Parker was free on bond until 2005, when he was retried, convicted by a jury, and sentenced to life in prison. On March 14, 2011, the South Carolina Supreme Court ruled that Parker's second prosecution was barred by the double jeopardy clause of the United States Constitution and the South Carolina Constitution. See State v. Parker, 391 S.C. 606, 707 S.E.2d 799 (2011). Parker was released from incarceration on April 7, 2011. In the Complaint, Parker claims he was deprived of liberty, property, employment, family, and privacy, and claims damages pursuant to Article I, Section 3 of the South Carolina Constitution, Article I, Section 10 of the South Carolina Constitution, Article I, Section 12 of the South Carolina Constitution, and Article I, Section 13(A) of the South Carolina Constitution.

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Defendant filed a timely Answer to Parker's Complaint, setting forth various defenses, including that the Complaint fails to state a claim upon which relief may be granted.

The decision of the Supreme Court provides a detailed factual and procedural history of Parker's trials. In 2005, when Parker was tried for the second time, Judge Few ruled that the second prosecution was not barred by double jeopardy. The Court of Appeals affirmed Parker's 2005 conviction, but he sought review by the South Carolina Supreme Court. The Supreme Court held that because the Solicitor in the first trial had goaded Parker into moving for a mistrial, the subsequent prosecution was barred by the double jeopardy clauses.

Parker asserts that because the 2005 prosecution was precluded by double jeopardy, the resulting incarceration following that conviction "was an unconstitutional taking of [Parker's] property rights to which he is entitled to compensation." Parker further argues that Defendant's actions give rise to a claim of inverse condemnation. Parker acknowledges that his claim is not grounded in tort or upon any statute, but is rather a constitutional claim for a taking.

II. LAW/ANALYSIS

A. Standard of Review for Motion to Dismiss

A ruling on a Motion to Dismiss for failure to state a claim must be based solely on the allegations as are set forth on the face of the Complaint. Rule 12(b), SCRPC. It is also appropriate to view the evidence in favor of the Plaintiff and to give the Plaintiff the benefit of any reasonably deducible inferences. If, however, the allegations of the Complaint do not entitle the Plaintiff to relief on any theory of the case, a Motion to Dismiss must be granted. Brown v. Theos, 338 S.C. 305, 526 S.E. 2d 232 (1999). As a general rule, important questions of first impression should not ordinarily be decided on a Motion to Dismiss; it is, however, proper to decide even novel issues on a Motion to Dismiss when the dispute is not as to the underlying

facts, but rather as to the interpretation of the law. Madison v. Am. Home Products Corp., 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) (citing Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs., 346 S.C. 158, 551 S.E.2d 263 (2001)). Further, novel questions of law may be decided on a Motion to Dismiss when further development of the record would not aid in resolving the issues. Id.

B. Takings

Parker maintains his incarceration and deprivation of liberty constitute a taking of private property pursuant to South Carolina Constitution Article I, Section 13.

Defendant contends that the Complaint, viewed most favorably to Parker, fails to set forth allegations that would amount to a claim under any theory because reversal of a criminal conviction cannot be the basis of any civil claim for a taking.

Article I, Section 3 of the South Carolina Constitution provides that the privileges and immunities of citizens of the state of South Carolina shall not be abridged without due process of law and that no citizen shall be denied equal protection. Article I, Section 10 of the South Carolina Constitution provides that citizens will be secure in their persons, houses, papers, and effects, and are protected against unreasonable searches and seizures. Section 10 further provides that no warrant shall be issued without probable cause. Article I, Section 12 of the South Carolina Constitution provides "no person shall be subject to the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself." Article I, Section 13, Subsection (A) provides that private property shall not be taken for private use without consent of the owner, nor for public use without just compensation first made for the property. The constitutional provisions discussed above are separate and distinct sections of Article I and secure different rights. To the extent Parker argues

he was improperly tried in 2005 in violation of the double jeopardy clause, that fact does not give rise to any claim for compensation or damages.

The double jeopardy protection guaranteed by Article I, Section 12 cannot be bootstrapped to Section 13 to form a takings claim. And while Article I, Section 13 provides for just compensation for citizens whose property is taken from them, a citizen's liberty is not the type of "property" contemplated. It is also clear under the wording of Article I, Section 13 that there was no taking of Parker's property for any "private use" or "public use."

Parker has crafted a creative argument, but there does not appear to be any legal authority to support it. Shaw v. City of St. Louis, 664 S.W. 2d 572 (Mo. 1983) is analogous. Mr. Shaw claimed that his prosecution, conviction, and imprisonment constituted a wrongful taking, use, and appropriation of his liberty and property. The Court, construing Missouri's State Constitution and its taking clause, held that to state a claim for inverse condemnation the Plaintiff must show that property was taken for public use or damaged without compensation. The Court noted "a claim for inverse condemnation does not exist for the taking of a person's liberty." Shaw, 664 S.W.2d at 575.

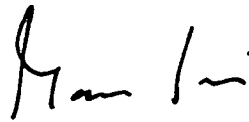
Parker has not directed the Court to any statute, constitutional provision, or case law that can be reasonably interpreted to support his claims. Although Parker's claim appears to be one of first impression, Shaw provides sound analysis of the issue. Further, it does not appear there is any need to further develop the record to decide the legal issues raised by this motion.

III. CONCLUSION

Defendant's Motion to Dismiss is GRANTED. Parker's Complaint is therefore accordingly DISMISSED.

IT IS SO ORDERED.

July 15, 2013
Greenville, SC



D. Garrison Hill
Circuit Judge