

The South Carolina Court of Appeals

Michael Pettinato, #218405, Appellant,

v.

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

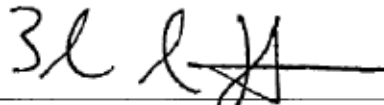
Appellate Case No. 2024-000295

ORDER

On March 28, 2024, this court denied Appellant's motion to proceed *in forma pauperis* and ordered Appellant to pay the required notice of appeal filing fee. When Appellant failed to pay the filing fee, this court dismissed his appeal on June 10, 2024. Subsequently, Appellant filed a petition for rehearing, which we construe as a motion to reinstate his appeal. After careful consideration, we grant the motion to reinstate the appeal.

Appellant further alleges he is entitled to proceed *in forma pauperis* because he was denied a state-created liberty interest when Respondent failed to provide him with notice of his parole hearing or refused to allow him an opportunity to appear at his parole hearing in violation of section 24-21-50 of the South Carolina Code (2007). Without deciding whether Appellant's allegation implicates a state-created liberty interest, we conclude Appellant has made a sufficient showing of an alleged violation of a state-created liberty interest to allow him to proceed *in forma pauperis*. See *Ex Parte Martin*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995) ("In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions."); *James v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 377 S.C. 564, 567, 660 S.E.2d 288, 290 (Ct. App. 2008) (stating "the inquiry into whether an inmate is entitled to review of a parole board's final decision is based on whether the inmate 'has a liberty interest in gaining access to the parole board'" (quoting *Furtick v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149

(2003)); *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008), *abrogated on other grounds by Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023) (holding that "[i]f a [p]arole [b]oard deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest"); § 24-21-50 ("The board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for under law.").



FOR THE COURT

Columbia, South Carolina

cc:

Michael Pettinato, 218405

Matthew C. Buchanan, Esquire

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