

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT
Columbia, S.C.

Appellate Case No. 2013-002026

George Tomlin 166361

Appellant,

v.

South Carolina Dept. of Corrections,

Respondent.

APPELLANT'S MOTION FOR LEAVE
PROCEED IN FORMA PAUPERIS

RECEIVED

OCT 15 2013

SC Court of Appeals

NOW COMES, THE APPELLANT, George Tomlin, 166361, a state prisoner, proceeding pro-se who hereby petitions this Court to proceed in the above referenced matter, In Forma Pauperis. The appellant received a letter from the Clerk of this Court requesting a filing fee. This letter was received on October 2, 2013.

The appellant wishes to bring before this Honorable Court an appeal of a state agency's decision after review from an administrative tribunal of the Executive Branch. Article I, § 22, of the S.C. Constitution explicitly guarantees the right to judicial review of all final agency decisions that affect private rights. Howard v. SCDC, 7332d 211 (SC 2012).

The question brought before the Executive Branch's tribunal involved a violation of Due Process, and Equal Protection, protected by Article I, § 3, of the S.C. Constitution and the U.S. Constitution Amendment XIV, § 1 ("[n]o state shall ... deprive any person of life, liberty, or property without due process of law,"). This guarantees more than just fair process; it cover(s) a substantive sphere as well, 'barring certain government actions regardless of the fairness of the procedures used to implement them,' "Cnty. of Sacramento v. Lewis, 523 U.S. 833, 840 (1998)(quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)). The core of the Due Process Clause, therefore, is the protection against arbitrary governmental action. id., at 845. Substantive due process in particular protects against the arbitrary infringement of "fundamental

rights that are so implicit in the concept of ordered liberty that neither liberty nor justice would exist if sacrificed. Doe v. Moore, 410 F.3d 1337, 1343 (CALL 2005)(quoting Palko v. Conn., 302 U.S. 319, 325-26 (1937)).

The United States Supreme Court has been prolific in its determination regarding the subject of in forma pauperis. Specifically, in Lane v. Brown, 372 U.S. 477 484-485 (1963), the Court determined that if a State chooses to have a system to review issues, then equal protection of the law requires that it may not foreclose indigents from access to any phase of those procedures because of their poverty. This is further substantiated, using different scenarios, in M.L.B. v. S.L.J., 117 S.Ct. 555 (1996), and Smith v. Robbins, 120 S.Ct. 746 (2000).

This state has also allowed the granting of this status, apparently if certain fundamental rights are involved. Sullivan v. SCDC, 586 SE2d 124 (SC 2003); Ex Parte Martin v. State, 471 SE2d 135 (SC 1995); and Harrison v. Harrison, 646 SE2d (SC Appl 2007)(Denial of due Process to deny indigent inmate informal pauperis.) In the case of Sullivan, he did not declare a "fundamental right," but if he had, the Court inferred that in forma pauperis could be authorized, if constitutional access to the Court is required.

CONCLUSION ,

Therefore, ;based on the above-mentioned precedent, and constitutional considerations, the appellant prays that this motion for leave to proceed in Forma Pauperis to be granted.

This 11 Day of October 2013.

Respectfully submitted;

S/ George Tomlin

George Tomlin 166361

Appellant, Pro-se

RCI GB-13, PO Box 2039

Ridgeland, S.C. 29936

Sworn To And Subscribed Before Me

This 11 Day Of October, 2013

Virginia Johnson (L.S.)
Notary Public

My Commission Expires" May 20, 2021