

THE STATE OF SOUTH CAROLINA  
IN THE SOUTH CAROLINA COURT OF APPEALS

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APPEAL FROM CLARENDON COUNTY  
COURT OF COMMON PLEAS

R. FERRELL COTHRAN, JR., Circuit Court Judge

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Case No. 2024-CP-14-00548  
(Appellate Case No. 2024-001861)

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Christopher M. Kennan, Appellant

v.

South Carolina Department of Corrections, Respondent

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FINAL BRIEF  
OF Appellant

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SC Court of Appeals

Christopher M. Kennan,  
pro se Appellant

TYRRETT

200 Prison Road

Enoree, SC 29335-9308

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Christopher M. Kennan, Appellant,  
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## Final Brief of Appellant

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~~Chris M. Kennan~~

Christopher M. Kennan #385016  
Pro Se Appellant

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200 Prison Road  
Enoree, SC 29335

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## Table of Authorities

### Cases:

Boddie v. Connecticut, 401 U.S. 371 (1970)

Booker v. South Carolina Department of Corrections, 855 F.3d 533 (4th Cir. 2017)

Carlson v. Green, 466 U.S. 14 (1981)

Carolina Nat. Bank v. Homestead Building & Loan Ass'n, 56 S.C. 12. (S.C. 1899)

\* EX Parte Martin, 321, S.C. 533, 535 (1995)

### SOUTH CAROLINA STATUTES AND COURT RULES

SCACR Rule 203 (b)(1)

SC Const. ART. I, § 15

SC Const. ART. I, § 2

SC Const ART. V, § 5

SCRMC Rule 1

SCRCP Rule 3 (a) and 3 (b)

SCRCP Rule 4 (and) specifically 4 (d)(5)

SCRCP Rule 5 (a) and 5 (d)

§ 14-3-330

§ 14-3-333

### Federal Court Rules

FRCP Rule 5 (a)(1)(B)

FRCP Rule 5 (d)(4)

## Statement of Issues on Appeal

Does the South Carolina Constitution require that indigent litigants be allowed to proceed in forma pauperis when their case involves "fundamental Constitutional rights?"

a) if "yes". Does plaintiff claim any such fundamental rights in his complaint?

b) Does plaintiff qualify as indigent? (at time of filing).

c) If "no" please see Ex Parte Martin, 321 S.C. 533, 535 (1995)

(R. p. 35)

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## Statements of the Case

On 8-30-2024, Plaintiff sent two copies of his (1983) Complaint, in forma pauperis application, summonses for each defendant and other forms included herein to the Clarendon County Court of Common Pleas (see "Exhibit C" for more details - [since listed on pp. 36-38 (R. pp 36-38)]

On <sup>(R. p. 2)</sup> 9-12-2024, Judge R. Ferrell Cothran denied this in forma pauperis application and sent the complaint back unfiled. (R. p. 3) Plaintiff received this court's decision on 9/19/24. He sent notice of Appeal to that court and to Defendant "SCDC" on 9-28-2024. (see R. pp. 4-5)

This case was not filed and [did not] have any case number assigned to it. No defendants have been served any summonses, but I have sent SCDC a copy of the complaint and a certified copy to the South Carolina Attorney General's office. The lower court has not responded to my request to be sent a Certificate of appealability - (R. pp. 6-8)

My appeal is being made so that I can have my case filed and summonses served without prepayment of any filing fees; (R. pp 6-8) and to be allowed to pursue the sole remedy the state holds out for me to receive justice for various claims asserted in my complaint. (R. pp 9-38).

It seems that my complaint fits the standard outlined in Ex Parte Martin, 321, S.C. 533, 535 (1995) and my in forma pauperis application should be filed, approved, and summonses issued for each defendant. Previously, case # 2023-001275 (and Appellate Case No. 2024-000832) were denied on appeal for unrelated issues and I hope to have the case heard this time.

In those cases, this and the S.C. Supreme Court deemed my appeals qualified to proceed in forma pauperis and I hope the same logic extends to my original submission to the lower courts. (R. pp. 2-3) (R. pp. 36-38)

Standard of Review (Please construe this pro se attempt liberally) 5. <sup>12024-0018611</sup>

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" (And I hope the same/similar argument holds true for South Carolina's Court of Appeals. I currently do not have access to Westlaw and this response is due today to be mailed.

"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." Cardinal 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 at law" Hiness v. South Carolina Power Co., 198 SC 280, 17 SE 2d 698 (1941) and pursuant to § 14-3-330.

Please apply relevant Standard of Review for this Appellate Court's Jurisdiction. As a pro se litigant I need this court to liberally construe this and other sections herein to aid me in my pursuit of justice. I am untrained in law.

Facts

The record for review is fully contained within this appeal. This case was not ever filed and received no case number since Plaintiff in forma pauperis application was denied, without explanation, in the South Carolina Court of Common Pleas for Clarendon County, on 9/12/24. Plaintiff is indigent. (R. pp. 2-3)

Plaintiff received notice of this denial on 9/19/24. "Notice" of Appeal was sent to that court and to named Defendant "SCDC". The lower court has not responded to my earlier request for a Certificate of Appealability. (R. pp. 4-5)

This appeal concerns Plaintiff in forma pauperis application being denied in this case - in which there are claims of Fundamental State Constitutional Violations - The South Carolina Supreme Court held in EX PARTE MARTIN 321 S.C. 533 535 (1995) that indigent plaintiffs would and should be allowed to access the courts where certain fundamental rights are involved. (R. p. 22, R. pp. 23-31)

Plaintiff has zero income and zero assets and is totally indigent (R. pp. 36-38).

Plaintiff's case involves various SOCA, Federal Constitutional and South Carolina Constitutional issues and alleged violations. The State Constitutional claims involve ART I, § 15 and ART I, § 3 - cruel and unusual punishment prohibitions and state rights to Due Process. Please refer to Exhibit C and the complaint herein for more specifics but essentially, I was sexually assaulted after staff left my dorm unattended - and despite the fact that I reported threats made to me by inmates concerning rape and murder threats and three actual assaults I endured, were ignored by Defendant SCDC's staff, as well as subsequent staff retaliation because of my grievances related to my sexual assault. (R. pp. 21-22, R. pp. 24-28)

If my in forma pauperis application is denied and my case can not be filed in state court to pursue my rights to redress these fundamental rights, then I will be denied access to the State Courts; and this would further violate my rights to Due Process in this State Court under S.C. Const. ART. I, § 3 what more fundamental rights are there under South Carolina's Constitution than those of Due Process, the right to access the courts and to be protected from cruel and unusual punishment? (R. p. 31)

Arguments:

I. Plaintiff's In Forma Application should be Approved

Plaintiff, Cheren "I, me" or "my") should have his in forma pauperis application approved as a matter of law. I qualify as indigent since I have zero income and zero assets. (R. pp. 36-38)

Without the approval of my in forma pauperis application, I can neither file my case nor serve any defendant - because I am impoverished.

An earlier case I filed dealing with these same facts (#2023-00 D75 and #2024-000 832) was dismissed on Appeal because I had not sent unserved Defendants Notice of Appeal. I have now refilled my complaint and served Notice of Appeal on all parties; even though none have received any summons. (R. pp. 17-20, 25)

Pursuant to SCRPC 3(b) and this states holdings in Ex Parte Martin, 321 S.C. 533, 535 (1995) id. at 535, citing Boyd 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."), my case should be filed and allowed to pursue the states legal remedy,

my case involves claims of being retaliated upon by prison staff because I reported my sexual assault and asked for help. This request was read weeks later and misconstrued by prison staff/defendants. In Booker v. SCDC, 855 F.3d (4th Cir. 2017) "this court has long held that prison officials may not retaliate against prisoners for exercising their right 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 inmates possess a First Amendment right to be free from retaliation for filing a grievance.")

My complaint deals with my begging defendants for help prior to my sexual assault, the ignoral of these documented threats by defendants, and a subsequent seven month campaign of harassment I endured by staff/defendants - because I utilized their grievance system to report this, and other assaults, I have a lot of documentation on this.

Access to the courts is protected by South Carolina's Const. Art. I, § 2 and Federally under U.S.C.A. 1 - and; (R. pp 273; 21-30).

Also, my complaint addresses the seven months I was held in solitary confinement while labeled "protective custody" and the deplorable conditions I faced there (e.g. grotesquely smelling of human feces since death threats in-cell showers and the black mold this caused to grow; only getting 4-5 hours outside of my cell the entire time - all of which contributed to my feeling hopeless, dependent and entertaining suicidal ideations which were acted upon at one time - My time held in solitary confinement is being litigated as violative of my due process rights and proscriptions against cruel and unusual punishment - guaranteed by South Carolina's Constitution. Staff admitted to retaliating on me and denying me outside recreation specifically because I wrote a PRFA related grievance

I was denied mental health treatment for nearly three months

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after this assault, despite my repeated, and well-documented requests (R. pp. 26-28)  
 Conclusion In Carson 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. S.C. Const. Art. 1, § holds that a citizens right to be protected from  
 cruel and unusual punishment, ~~prohibits~~ and the state of South Carolina certainly holds  
 this to be a fundamental right, as described in Ex. parte Martin, 321 S.C. 533,  
 535 (1995) as being worthy of being allowed to proceed in forma pauperis is state  
 Court. I was denied all mental health treatment for months following a sexual assault and caused  
 me to feel hopeless, dependent and wallowing in my own misery. (R. pp. 26-28).  
 Furthermore, SCDC has a "Statute Protective Custody" policy which mandates that all  
 inmates are to receive a "PC Board" within seven (7) days of placement in the

Restrictive Housing Unit ("RHU") following a request for Protective Custody. I wasn't allowed  
 even this basic and required hearing for over five (5) months without appeal and  
 without any rights to Due Process being afforded to me.

State Constitutional claims do not require exhaustion of SCDC's grievance process  
 but Federal claims are required to do so. The state claims act, and are treated,  
 quite differently to Federal ones and I am being denied the state of South  
 Carolina's exclusive remedies held out to redress state grievances, (SCCA and State  
 Constitutional ones) merely because I'm too poor to pay the courts filing fees.

Furthermore, despite the fact that no defendant has been served in this unfiled  
 case, I have served notice of appeal on them I beg this Appeals court approve  
 my in forma pauperis application for this appeal and then to reverse and  
 remand to the Clarendon County Court of Common Pleas, Please waive the \$250.00  
 filing fee for this appeal and I beg this court to use the same logic provided

in Ex parte Martin (Supra) to approve this appeal. If this court approves my in forma  
 pauperis application for this appeal shouldn't my initial request be approved too?  
 Please approve this appeal so I can pursue justice in state court for a sexual  
 assault I endured that I asked the defendants to help prevent. I warned them of  
 verbal threats and multiple attacks, yet they ignored the requests for help and just  
 let nature take its course. The justice system surely must not only be for those who  
 can afford it. I need your help here. Please review the complaint itself. Due to time  
 and paper constraints, I am forced to submit this less than ideal appeal.

Thank you.  
 Respectfully,  
 Christopher M. Kenyon #385016  
 pro se plaintiff / Appellant

Executed on this 18th day of October  
 2024  
 at Evans City  
 610 Hwy 6W  
 Bennettsville, SC 29512